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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 768 68

FOSTER-FOUNTAIN PACKING COMPANY, INC., AND SEA FOOD COMPANY, APPELLANTS,

vs.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

FILED FEBRUARY 14, 1928

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, AT NEW ORLEANS

No. 1897. In Equity

FOSTER FOUNTAIN COMPANY, INC., et al.

vs.

E. J. HAYDEL et al.

BILL OF COMPLAINT—Filed Sept. 6, 1927

To the Honorable Louis H. Burns, Judge of said Court:

Comes the Foster-Fountain Company, Inc., a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, in the State of Louisiana and the Sea Food Company a corporation organized under the laws of the State of Mississippi, domiciled at Biloxi, Harrison County, Mississippi, in this their original bill of complaint exhibited in this Court against E. J. Haydel, Fred Schouest, L. R. Cabriac, Louis A. Marks, Sheriff of St. Bernard Parish, of the State of Louisiana; Ernest Alberti, Sheriff of Plaquemine Parish of the State of Louisiana; Leander H. Perez, District Attorney in and for the Parishes of St. Bernard and Plaquemine of the State of Louisiana; Percy Saint, Attorney General of the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the State of Louisiana; all adult residents of the Eastern District of Louisiana, within the jurisdiction of this Honorable Court, and respectfully show unto the Court the following statement of facts:

I.

This suit is brought in a court of equity of the United States and the jurisdiction of the Court is asserted and

claimed for that, the complainants are threatened with and subjected to the irreparable harm, injury and damage hereinafter set out, and are without adequate remedy except in a court of equity. This suit is brought for injunction, and other equitable relief.

II.

The amount involved in this suit exceeds the sum of Three Thousand Dollars, including interest and costs in that the complainants have entered into a contract, hereinafter set out for the sale of shrimp of the value greatly in excess of Three Thousand Dollars, which they will be prevented from complying with unless they obtain the relief prayed for in this cause, and the value of the contract, and the immunity of the complainants from liability, penalty and forfeiture complained of herein, and the value of the right of the Foster Fountain Company, Inc., to sell to the Seafood Company, and the value of the right of the Seafood Company to accept compliance on the part of the Foster-Fountain Company, Inc., with the contract hereinafter set out, and the loss and inconvenience, harm, injury and damage which would be caused each of the complainants if denied the relief prayed for, would greatly exceed the sum of Three Thousand Dollars, exclusive of interest and costs, as will more fully hereinafter appear.

III.

This is a controversy arising over the Constitution and laws of the United States, in that the complainants allege aver and claim that Sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of Act Number 103, passed by the Legislature of the State of Louisiana, and approved July 8th, 1926, appearing in the published acts of the State of Louisiana, beginning on page 152 are in contravention of and violate Paragraph 3, Subdivision 8, Article 1 of the Constitution of the United States conferring upon Congress the exclusive power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, Paragraph 2 of Article 6, containing the following provision:

[fol. 3] "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all

treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Article 1, of the Fourteenth Amendment to the Constitution of the United States, contains the following provision:

"I. Who are citizens.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Complainants further claim that said Act of the Legislature of the State of Louisiana, and especially the sections hereinbefore set out, if so construed as to deny the complainants the relief prayed for in this bill of complaint, violates Section 2 of the Bill of Rights of the State of Louisiana, in the following language:

No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damages except for public purposes and after just and adequate compensation is paid."

And also Section 14 of Article 19, of the Constitution of the State of Louisiana, containing the following language:

"It shall be unlawful for persons or corporations or their legal representatives, to combine or conspire together, or to unite or pool their interests for the purposes of forcing up or down the price of any agricultural product or article of necessity for speculative purposes; and all combinations, trusts, or conspiracies in restraint of trade or commerce, and all monopolies or combinations to monopolize trade or commerce, are hereby prohibited in the State of Louisiana, and it shall be the duty of the Attorney General

of his own motion, or any District Attorney of the State, when so directed by the Governor or the Attorney General, to enforce this provision by injunction or other legal proceedings, in the name of the State of Louisiana, and particularly by suits for the forfeiture of the charters of offending corporations, incorporated under the laws of the State of Louisiana and for the ouster from the State of foreign corporations. Provided however that nothing herein contained shall prevent the Legislature from providing additional remedies for the enforcement of this section.

The provisions of this section are self-operative."

IV.

The complainant, Seafood Company, is engaged in the catching, canning, and packing of shrimp at Biloxi, Mississippi, which shrimp by it are sold in interstate commerce to all parts of the United States, and are exported to England, France and Germany. That the history of shrimp as a valuable food goes back to the beginning of mankind, and is used all over the world; that there are hundreds of type of shrimp, but that in this country shrimp are used principally by restaurants, hotels, and homes, where shrimp are used in some form in the making of salads, and/or in what is called "shrimp cocktails"; that its greatest value is obtained after being packed and shipped in interstate and foreign commerce, to those parts of the country where seafood cannot be obtained in its fresh or native state; that at Biloxi, Harrison County, Mississippi, there are [fol. 4] located a number of shrimp packing plants; that there are situated in Biloxi about twenty plants; that during the shrimp season they employ approximately a thousand men, and three or four thousand women and children, that there is invested in the shrimp industry at Biloxi, Harrison County, Mississippi, approximately one and one-half millions of dollars, and there are at least two thousand families that directly depend upon this and the oyster industry as a means of livelihood; that during the year 1926, which was not a favorable year for the industry, there were canned in or around Biloxi, Mississippi, one hunderd and sixty-six thousand (166,000) cases of shrimp of the

value of approximately One Million ($1,000,000) Dollars; and that the industry at Biloxi, Mississippi comprises approximately one-fourth of the shrimp industry of the United States. That owing to topographical and climatic conditions, community life, and other economical conditions unnecessary to be set out, the Mississippi coast is, and has always been, splendidly adapted to the industry; that the packing plants, including that of the complainants, Seafood Company, at Biloxi, Mississippi have large investments in grounds, buildings and machinery, and use the latest devised machinery and appliances, as well as the most expert and economical methods rules and devices in the development of the industry.

V.

Complainants show unto the Court that the shrimp is a migratory fish of such a nature that its real place of incubation is not with certainty known even to the most expert fish catchers. Shrimp are found all over the Gulf of Mexico, it not being possible with certainty to tell whether these shrimp breed or spawn in the local bayous of Louisiana, Mississippi and Alabama, or whether they have some other breeding place, and come to the coast from the outside waters of the Gulf. These shrimp are always to be found in unlimited numbers almost exclusively in the waters of the State of Louisiana, within three miles of the shore line, lying west of the channel of Pearl River. The territory from which Mississippi chiefly gets its shrimp in Louisiana is that territory which lies south of Orleans Parish and Lake Pontchartrain, west of the channel of Pearl River north of that chain of islands called Chandeleur Islands, and east of the Mississippi River. This territory embraces principally the Parish of Plaquemine and St. Bernard, which Parishes consist of an alluvial belt along the each bank of the Mississippi River, varying in depth from one to fifteen miles, and then by a series of bays, bayous, lagoons and marshes, which are generally termed and known as "Louisiana Marshes;" the land being lower than sea level at extraordinary high tides and during hurricane tides being entirely covered with water to such an extent that very little of the two Parishes are free from the high tide. This

territory also includes that part of the Mississippi Sound belonging to Louisiana, Lake Borgne and west of Breton Island, lying north of Chandeleur Islands.

Complaints show unto the Court that the waters of the State of Mississippi for some unaccountable reason, do not afford a certain and adequate supply of shrimp, and that the complainant Seafood Company, and other persons, firms and corporations, engaged in packing shrimp on the Mississippi coast, are practically dependent for the shrimp used by them in operating their business and in supplying the demands of interstate and foreign commerce, upon the shrimp obtainable in large and unlimited, never ceasing and ever growing quantities, from the waters of the State of Louisiana east of the Mississippi River, hereinbefore referred to.

VI.

The complainants show unto the Court that the most common method of catching shrimp is for boats equipped with gasoline engines, varying in size from fifteen to twenty feet, to go into all parts of the waters of Mississippi Sound, Louisiana marshes, and the Gulf of Mexico, within three miles of the Louisiana shore, and fish for these shrimp by means of a net which trails from the rear end of the boat, which net is called the "trawl"; and the method of catching shrimp with the trawl is for this net to trail for a certain time while the boat is propelled by its engine, and then to be gradually drawn into the side of the boat, thereby bringing the shrimp that it has intercepted into a bag, which is hoisted up into the boat, and the shrimp deposited in the boat. When several hundred barrels of shrimp have been [fol. 5] deposited on a freight boat, where they are packed in ice, this boat, which is propelled by gasoline, then goes to Biloxi and unloads the shrimp off on the wharf of the factory owning the boat. The shrimp are then placed in large containers that are rolled on wheels and are carried into a shed where they are taken from the containers, placed on large trays, and the head and hulls are packed from the live or dead shrimp by hand. This work is accomplished by the use of a large number of women and children, and men who are unable to perform other manual labor, the act of picking the shrimp entailing very little, if any, manual labor,

but being assisted greatly by the skill of the picker. After the shrimp are picked, in most cases, the heads and hulls are thrown away into the water, where they are consumed by crabs, eels and other scavengers of the sea; but in some instances these heads and hulls are kept and placed in a boiler and boiled, and are then placed on a rack and dried, and after going through this process they are called "shrimp bran," and are used to a small extent in the manufacture of commercial fertilizer, the only plant that uses it in quantities being a plant located at or new Biloxi, Mississippi, and the amount of it used at all is negligible.

VII.

Complainants show unto the Court that owing to topographical, physical, climatic and other economical conditions not necessary to be set out, it has not been economical, practical or possible to pack shrimp in that portion of Louisiana contiguous to the waters of Louisiana heretofore described and east of the Mississippi River; that there is but four plant- in that territory and the operations thereof have never been successful.

VIII.

Complainants show unto the Court that the Foster-Fountain Company, Inc., complainant, is engaged in the catching, packing and canning of salt water shrimp, that it operates a shrimp hulling plant on the west bank of Pearl River in the State of Louisiana, near Pearlington, Mississippi; that the complainant, Foster Fountain Company, Ins. has contracted to sell, transport and deliver to the complainant, Seafood Company, during the packing season of 1927-1928, beginning upon the 15th day of August, 1927, and ending upon the 15th day of June, 1928, one carload of shrimp per month; that the said contract is based upon a valuable consideration to be paid by the Seafood Company, complainant to the Foster Fountain Company, Inc., complainant; that the said Foster Fountain Company, Inc. are to catch or purchase said shrimp in the waters of the said State of Louisiana aforesaid, and to convey and transport the same from the State of Louisiana to the complainant Seafood Company in the State of Mississippi; that the obtaining of

said shrimp is necessary on the part of the Seafood Company in order that it may supply the demands of its business in interstate and foreign commerce, and in order that it may keep its plant at Biloxi, Mississippi, in operation. That the said Seafood Company has a large amount of money invested in said plant, to-wit, approximately the sum of One hundred and fifty thousand ($150,000.00) Dollars; that it employs a large number of men, women and children, that unless it can obtain the supply of shrimp under the terms of said contract from the Foster Fountain Company, Inc. its business will be destroyed, its plant rendered valueless, its business ruined, and its employees thrown out of employment. That the Foster Fountain Company, Inc. will either acquire or catch, strictly in accordance with the term- of the statute hereinbefore referred to of the State of Louisiana, shrimp to comply with said contract, and is ready, willing and able to comply therewith. Each of the parties hereto are able, ready and willing to comply with those conditions and covenants contained in said contract obligatory upon them, and they now offer to do so. That a copy of said contract is hereto attached and made Exhibit "A" hereto, the same being asked to be considered as if set out herein in full in words and figures.

IX.

That the defendants herein threaten to interfere with the performance of this contract and threaten to prosecute the Foster-Fountain Company, Inc. its agents, servants and employees and seize and confiscate its property, if it shall perform said contract; and threaten to prosecute the complainants, Seafood Company, its agents, servants and employees, and confiscate its property, if it shall within the State of Louisiana accept compliance with any part of said contract.

[fol. 6] Complainants show unto the Court that upon the 28th day of July, 1926, the Legislature of the State of Louisiana having passed, there was approved an Act known as Number 103, being House Bill 177, known as the "Shrimp Law," which appears in the published Acts of the Legislature of the State of Louisiana, beginning on page 152; that a copy of said Act is hereto attached marked Exhibit "B" hereto,

and asked to be considered as if set out herein in full words and figures; that Section 4 of said Act contains the following language:

"Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; and any person, firm or corporation so violating the provisions of this Section shall be liable to the penalties hereinafter provided."

That Section 10 of said Act provides a license tax on seines and trawls; that Section 12 provides a severance tax on shrimp; that Section 13 of said Act is in the following language:

"Section 13. All salt water sh-i-p and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

In order that all of these inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department

of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell within the State of Louisiana, such lawful take- or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limits of the State, without restriction or reservation."

That Sections 14, 15 and 16 provide for taxes and licenses; that Section 19 provides certain penalties for a violation of said Act, said Section 19 being in words and figures as follows, to-wit:

[fol. 7] "Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any provisions of this Act, where a punishment has not been otherwise provided shall be guilty of a misdemeanor and shall *no* conviction thereof be fined not less than Twenty-five Dollars ($25.00) or not more than One Hundred Dollars ($100.00) for the first offense, nor less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for the second offense and for the third offense the fine shall not be less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days, or may impose both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violations may be confiscated by order of the Court.

Vessels, their tack*el* and apparatus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken

from the waters of this State, shall be seized and taken into possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred the Sheriff being authorized to permit of the release of the said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction, providing for the return of such vessel and its apparel and apparatus to abide the judgment of the Court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forefeiture of such vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the Court of violating the provisions of this law prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or to imprisonment of not less than six months (6) nor more than one (1) year and shall be liable to both fine and imprisonment in the discretion of the Court."

XI

The complainants show unto the Court that the Foster-Fountain Company, Inc. is ready, willing and able to comply with its contract with the Seafood Company, co-complainant, but that if it shall attempt to do so it will be prosecuted and its vessels and property seized for confiscation under said Act by the defendants herein referred to.

[fol. 8] Complainants show unto the Court that if the sections of said Act, especially Sections 13 and 19, are valid the complainant, Foster-Fountain Company, Inc., its agents, servants and employees, will be subjected to prosecution and will be liable to fine of not less than Five Hundred ($500.00) Dollars, nor more than One Thousand ($1,000.00)

Dollars, or to imprisonment of not less than six months nor more than one year, or to both, within the discretion of the court.

The complainants show unto the Court that each act of shipment would be a separate offense, and that the contract which the complainant, Foster-Fountain Company, Inc., has entered into with the complainant, Seafood Company, would require several deliveries on the part of its agents and servants during each day, and the agents and servants of the Seafood Company would be subjected to the same prosecution if delivery should be taken under said contract in the State of Louisiana, and that the employees of each of said complainants, and the complainants themselves, would be annoyed, troubled, harrassed, and would be prevented from carrying out and performing said contract, and, in addition thereto, their vessels and equipment would be seized and subjected to forfeiture, by reason of which the plaintiffs, and each of them, their agents and servants, would suffer irreparable harm and damage.

XII

The complainants show unto the Court that Section 4 of said Act violates the Fourteenth Amendment to the Constitution of the United States, hereinbefore set out, in that while the Foster-Fountain Company, Inc., maintaining a hulling plant in the State of Louisiana, is given the express right to take shrimp from the waters of the State of Louisiana, this section attemp-s to prohibit them from so taking the shrimp unless they are operating a canning or packing factory or drying platform in the State of Louisana, and in giving this right to other residents of the State regardless of whether they own such a canning or drying platform in the State or not; and violates the Fourteenth Amendment to the Constitution of the United States, in that the complainants are denied the rights and immunites of citizens, are denied the equal protection of the law, and are deprived of their property without due process of law.

Complainants show unto the Court that the said Foster-Fountain Company, Inc. could only operate a canning and packing plant in the State of Louisiana contiguous to the waters of the State of Louisiana above referred to at great loss.

Complainants show unto the Court that Section 13 of said Act is unconstitutional, in that it attemp-s to compel the Foster-Fountain Company, Inc. to pack shrimp in Louisiana at a loss to themselves as a condition precedent to their making and filling contracts in interstate commerce.

Complainants further show unto the Court that the Act of the State of Louisiana especially permits and authorizes shrimp to become the subject of barter, sale and trade, and to become an article of interstate commerce, and permits each of the complainants to acquire the same in the State of Louisiana; but said Act violates the Fourteenth Amendment to the Constitution of the United States, in that they are forbidden from shipping the same out in the hulls; that for the same reason said act violates that Section of the Constitution of the State of Louisiana hereinbefore set out.

The complainants further show unto the Court that Section 13 of said Act violates the Commerce Clause of the Constitution of the United States, in that said section imposes a direct burden upon interstate commerce; that said section was not passed to conserve the natural resources of the State of Louisiana, because said Act expressly permits the natural resources of the State, to-wit, both the shrimp and the hulls to become the subject of barter and commerce and to pass from the State of Louisiana; but that the effect and purpose of said Act is to compel the packing [fol. 9] and manufacture of said shrimp inside of the State of Louisiana which requirement has no relation to a proper exercise of the police power of the State by the Legislature of the State of Louisiana, has no relation to a conservation of the natural resources of the State, but that said section is unreasonable, unlawful, arbitrary, and was provided for the purpose of compelling the packing and manufacture of said shrimp in the State of Louisiana, thereby directly burdening interstate commerce; that, therefore, said Section 13 of the Act violates the Commerce Clause of the Constitution, as well as the Fourteenth Amendment thereto, and that provisions of the Constitution of the State of Louisiana hereinbefore referred to.

Complainants further show unto the Court that said section violates the Fourteenth Amendment to the Constitution of the United States, as well as Section 14 of the Constitution of the State of Louisiana, as well as the Commerce Clause of the Constitution of the United States, in

that the effect and purpose of the section is not only to impose a direct burden upon interstate commerce, but to create a monopoly in the manufacture and sale of shrimp, and place the same in the hands of a small number of corporations engaged in the business in the State of Louisiana; that the necessary effect of the Act will be to reduce the market price of the raw shrimp and to increase in interstate commerce the price of the finished product. That said Section 19 of said Act was put in the Act for that and no other purpose; was intended to and will have the effect of burdening interstate commerce by increasing the price of the finished product to the ultimate consumer, and creating a monopoly. That said Section 19 further violates the Fourteenth Amendment to the Constitution of the United States, in that it deprives each of the complainants of their right to contract to purchase shrimp with the hulls thereupon and ship the same in interstate Commerce.

Complainant would show unto the Court that prior to the passage of the Act passed by the Legislature of the State of Louisiana, complained of herein, a large portion of the shrimp caught in the waters of Louisiana described herein were shipped in the raw state from said State, and as to the shrimp consumed within the State only a negligible quantity of the hulls ever were, or are now since the passage of the Act, being used as a fertilizer; that no plant in the State of Louisiana has ever been, or is now, using the hulls of shrimp for such purpose; that at all times prior to the passage of this Act, and since the passage of said Act, the hulls of the shrimp caught in said waters have been, and are now, substantially all being thrown away, and that the alleged purpose to reserve the hulls of said shrimp as a fertilizer is merely a subterfuge to justify, if possible, a violation of the 14th Amendment to the Constitution of the United States and the Commerce Clause of the Constitution of the United States hereinbefore set out; that the hulls of shrimp are not of great value as a fertilizer; and at no time in the State of Louisiana has there been any special demand therefore, and that the Legislature of the State of Louisiana in passing the Act did not do so for the purpose of using said hulls as a fertilizer. Complainants state, however, that they are willing and now offer to return to the State of Louisiana the raw hulls of any shrimp which may be removed by complainants under this

contract subject to such rules and regulations as this Court may order.

XII-B

Complainant further shows that the Foster-Fountain Company, Inc., for years past have been engaged in purchasing shrimp from citizens of Louisiana, who, under Section 4 of the Act hereinabove referred to, have the right to catch sh-imp in the waters of the State of Louisiana, paying to these citizens of Louisiana not only the market price for said shrimp but a price in excess of the market price of said shrimp which said shrimp were later shipped [fol. 10] by said Foster Fountain Company, Inc. to its plant at Biloxi, Mississippi, and there canned and shipped to all parts of the world.

That it now has the opportunity to make such purchase of shrimp from citizens of the State of Louisiana where, under the law herein complained of, shrimp are made the subject of barter and sale and can from said citizens secure a plentiful supply of said shrimp with which to fulfill its contract and to keep its plant in operation, but that on account of the section hereinabove referred to and the laws of the State of Louisiana herein exhibited, it is prevented from shipping said shrimp from Louisiana in its raw state to the State of Mississippi, and complainant is advised and believes that at this time that the officers who are charged with the duty of enforcing said laws are presently patrolling the waters of the State of Louisiana threatening to arrest any and all persons violating said law and with specific instructions to seize and confiscate the boats of complainants were complainants to endeavor to ship said shrimp — its factory in Biloxi, Miss. and thereby complainants are unable to now carry out its contract made with the complainant, Seafood Company, or to operate its business at a profit in the City of Biloxi, all of which said acts on the part of the officials of the State of Louisiana, as well as said section hereinabove referred to, violate the commerce clause of the constitution of the United States in that by refusing to allow the shipment of the shrimp purchased lawfully by the complainant, Foster-Fountain Company, Inc., in Louisiana to be shipped to the State of Miss. the complainant, Foster-Fountain Company, Inc. is compelled to dispose of said shrimp in Louisiana at a loss, thereby imposing a direct

burden upon interstate commerce, and further said acts violate the fourteenth amendment of the constitution in that it denies to said Foster-Founter Company, Inc. the equal protection of the law by compelling said Foster-Fountain Company, Inc. who is given the right by its charter, issued by the State of Louisiana, to catch, purchase or can shrimp from canning said shrimp at such point and in such locality as will be most profitable to the complainant, Foster-Fountain Company, Inc. requiring them to can said shrimp in the State of Louisiana at a loss, thereby denying them the right given all other citizens of the State of Louisiana to operate their business in such manner as to yield therefrom the most profit therein.

XIII

Complainants further show unto the Court that Sections 4 and 13 of said Act violate the Fourteenth Amendment to the Constitution of the United States, as well as Section 2, Article 1 of the Bill of Rights of the Constitution of the State of Louisiana, in that in the enforcement of the law persons residing in the State of Louisiana, who are engaged in the business of shipping out what is known as "raw shrimp" with the full knowledge of the officers of the law charged with the enforcement of the Act, are permitted to ship the whole shrimp out, and that the law is only intended to be and sought to be enforced against corporations like the complainants, operating a packing plant outside the State of Louisiana; that such individual residents of the State of Louisiana are knowingly permitted and allowed to evade the Act by filing an affidavit, known to be false by the officers charged with the enforcement of the Act, that the shrimp are caught beyond the three mile limit.

Complainants show that said Act not only violates the Constitution of the United States in the particulars hereinbefore set out, but violates the same as well as the Constitution of the State of Louisiana, in the administration and enforcement thereof.

XIV

Complainants show unto the Court that Louis A. Marks, Sheriff of the Parish of St. Bernard; Ernest Alberti, Sher-

[fol. 11] iff of the Parish of Plaquemine; Leander H. Perez, District Attorney for the Parishes of St. Bernard and Plaquemine; Percy Saint, Attorney General of the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the State of Louisiana; E. J. Haydel, Fred Schouest and L. R. Cabriac, defendants, are all citizens and residents of the State of Louisiana, are charged under the laws of the State of Louisiana with the duty of the enforcement of said Act; that all of said defendants reside within the jurisdiction of this Court, in the Eastern District of the State of Louisiana; that the complainants hereto are ready, willing, able and anxious to proceed with the performance of said contract, but if they shall so proceed the defendants hereinbefore named, who are the officers of the State of Louisiana charged with the enforcement of said Act, will promptly, under the provisions of said Act, interfere therewith by having them, their officers, agents and servants, arrested, and by confiscating their vessels and equipment.

Complainants allege, therefore, that they are prevented from the carrying out of said contract in interstate commerce and that, therefore, immediate and irreparable loss and damage will result to them, and each of them by reason of the unlawful acts and conduct of the defendants, who are proceeding to act, and who will act, under and by virtue of the terms of the Act of the Legislature of the State of Louisiana hereinbefore set out.

XV

Complainants show unto the Court that while they allege and aver that the licenses and taxes imposed in said act, in Sections 10, 12, 14, 15 and 16, are unconstitutional, and in violation of the Commerce Clause of the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, and Section 3 of the Bill of Rights of the State of Louisiana, for the reasons hereinbefore set out, they offer to pay all of such taxes and charges as a condition precedent to the removal of said shrimp, and in all things offer to do equity and allege and aver that the Foster-Fountain Company, Inc., will not catch or acquire any shrimp in the State of Louisiana, or attempt to trans-

port any from the State of Louisiana, except upon the payment of the taxes and charges provided for in said act.

XVI

The premises considered, complainants pray that this original bill of complaint, with the exhibits, be received and filed; that a temporary restraining order issue from this Court restraining the defendants from the enforcement of said Act, and from in any manner preventing or interfering with the execution of that certain contract between the complainants hereto, hereinbefore set out; and that they be restrained and enjoined from prosecuting either of the complainants, or their agents or servants, and that they be restrained from interfering with, seizing, or attempting to confiscate, or in any manner interfering with the Boats, property or equipment of the complain-ts, or either of them, used in the performance of said contract; and that an injunction will issue after a hearing before three judges, as provided by the Acts of Congress, enjoining and restraining the defendants, and each of them, as hereinbefore set out.

Complainants further pray that process issue requiring the defendants and each of them to plead, answer or demur to the allegations of this bill of complaint in accordance with the Equity Rules, but not under oath, which is expressly waived. And at the final hearing of the case the Court will render a permanent injunction, enjoining the defendants, and each of them, from the *d*nforcement of said Act; and that the rights of the complainants to make and execute said contract be fully determined and adjudicated, and that the defendants, and each of them, be perpetually enjoined from in any manner interfering therewith.

[fol. 12] If complainants have not prayed for the proper relief, the Court will grant such other, further and general relief as may be just and expedient in the premises.

(Signed) Foster Fountain Company. Sea Food Company, Inc., by W. H. Watkins and Rushing and Guice, Sols.

[fols. 13 & 14] *Duly sworn to by A. L. Hindenheimer and R. Hart Chinn. Jurat omitted in printing.*

[fol. 15] EXHIBIT TO COMPLAINT

STATE OF MISSISSIPPI,
County of Harrison:

This agreement made and entered into by and between the Sea Food Company, a Mississippi corporation, acting by A. R. Heidenheim, its general manager, secretary and treasurer and Foster Fountain Company, Inc. a Louisiana corporation, acting herein by R. H. Chinn, its president, on this — day of August, 1927, witnesseth:

That in consideration of the sum of One Dollar cash in hand paid by each party to the opposite party herein and of the mutual benefits and advantages running in favor of each party, it is agreed between said parties as follows:

That said Sea Food Company agrees to purchase and said Foster Fountain Company, Inc. agrees to sell to said Sea Food Company, 1,000 cases of 5 oz. shrimp, wet pack, each month during the season of 1927-1928, from such shrimp as are caught and packed by the Foster Fountain Company, Inc. in the waters of the State of Louisiana.

The purchase price of said shrimp shall be the prevailing market price at Biloxi, Miss. f. o. b. cars at the time of the delivery of said shrimp on board cars at Biloxi, Miss. and shall be payable when said shrimp are delivered on board cars consigned to the persons named by said Sea Food Company and the bill of lading therefor delivered to said Sea Food Company.

It is further agreed between the parties hereto that the said Sea Food Company agrees to buy from said Foster Fountain Company, Inc. and said Foster Fountain Company, Inc. agrees to sell to said Sea Food Company each week during the shrimp season of 1927-1928 100 barrels of raw shrimp from the catch of the Foster Fountain Company, Inc. or the purchase by said Foster Fountain Company, Inc. of shrimp in the State of Louisiana. These shrimp shall be delivered by the Foster Fountain Company, Inc. at the wharf of the Sea Food Company at Biloxi, Miss. and the Sea Food Company shall pay therefor the then prevailing market price for raw shrimp at Biloxi, Miss. plus the sum of ten per cent upon the purchase price of each shipment.

All labels for the above canned shrimp shall be furnished by the Sea Food Company.

It is understood between the parties hereto that the performance of this contract depends upon the ability of said Foster Fountain Company, Inc. to purchase or catch shrimp in Louisiana, that is, if no shrimp are caught during the season of 1927-1928 said season being a failure, then said Foster Fountain Company, Inc. shall not be required to make delivery as herein agreed upon.

Witness the signatures of all parties hereto at Biloxi, Miss. on this the 14th day of August, A. D. 1927.

Sea Food Company by A. R. Heidenheimer, Genl., Mgr., Secy. & Treas.

Foster Fountain Company, Inc. by R. Hart Chinn, President.

(Signed.) Witnesses: W. L. Guice, Hazel L. Burke.

[fol. 16] EXHIBIT TO COMPLAINT

Act No. 103 of the Louisiana Legislature of 1926

Protecting Salt Water Shrimp and Regulating the Salt Water Shrimp Industry

Summary

Section 1. Declaring State ownership of salt water shrimp, their hulls, and all parts thereof.

Section 2. Control of shrimp industry vested in the Department of Conservation.

Section 3. Defining inside and outside waters.

Section 4. Right to take, pack and dry salt water shrimp confined to resident persons and firms or corporations composed of residents of this State.

Section 5. Fixing close season for both inside and outside waters, and prohibiting having shrimp in possession for canning or drying within the State, irrespective of where caught.

Section 6. Fixing size limit of shrimp that may be taken from Louisiana waters, or had in possession if taken from waters not under the jurisdiction of the State.

Section 7. Giving Department authority to prohibit the using of trawls and seines over 10 fathoms in length, at any time in the inside waters of the State.

Section 8. Regulating size of mesh of seines, trawls and similar device.

Section 9. Illegal to offer for sale or have shrimp in possession for canning or drying within the State during the close season irrespective of where caught.

Section 10. Fixing license fees for using seines, trawls, etc., and providing penalties if licenses are not procured at time stated in the law.

[fol. 17] Section 11. Metal license tags to be provided free of cost with licenses for seines, trawls, etc.

Section 12. To levy severance tax on shrimp sold fresh, canned or dried within the State and provide penalties for non-payment.

Section 13. Declaring shells or hulls and heads valuable for fertilizer and prohibiting the exportation of shrimp from the State until after these have been removed. And requiring licenses to conserve same for fertilizer, and to make monthly reports herein provided for.

Section 14. Must make application for all licenses on forms provided for by the department. And required to arrange canning plant and drying platforms to conform with requirements of the State Board of Health.

Section 15. To levy fees for licenses under which to operate canning plants and shrimp drying platforms.

Section 16. To require resident shrimp freighting vessels to obtain a license.

Section 17. The Department required to provide patrol vessels for the enforcement of shrimp laws.

Section 18. Shall not affect other portions of this law, if any part is held to be invalid or unconstitutional.

Section 19. Regulating common carriers and providing penalties for violation of same.

Section 20. All collections through Court proceedings to be paid to school fund, except 10% to be paid to sheriff.

Section 21. Repealing clause, and extending privileges to canning factories located beyond the confines of the State to continue operations under licenses and laws, until June 15, 1927.

An Act

To declare all shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction [fol. 18] to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana; to provide penalties for the violations of the provisions of this act, and to repeal all laws in conflict herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said salt water shrimp shall be and are hereby declared to be the property of the State; until the title thereto shall be divested in the manner and form herein authorized and shall be under the exclusive control of the Department of Conservation of the State of Louisiana, until the right of private ownership shall vest therein as herein provided, and that no person, firm or corporation shall catch or have in their possession, living or dead, any salt water shrimp, or parts thereof, or purchase, sell or offer for sale, any such shrimp or parts thereof, after same have been caught except as otherwise permitted herein.

Section 2. That the control, on the part of the State of Louisiana of the shrimp industry shall be vested in the Department of Conservation of the State of Louisiana, which shall be required to enforce the provisions of the laws regulating said industry.

Section 3. That for the purpose of this Act, the waters of the State of Louisiana shall be divided into two (2) classes, to be known as inside waters and outside waters. The outside waters shall include the Gulf of Mexico within three (3) miles limit of the seashore. All other waters of the State within which the tide regularly rises and falls sall be classed as inside waters. In the inside waters shall be included Timbalier Bay, East Cote Blanche Bay, Atcha-

falaya Bay, West Barataria Bay, and all other bays and sounds found along the Louisiana Coast of the Gulf of Mexico.

Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack and [fol. 19] dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; and any person, firm or corporation so violating the provisions of this Section shall be liable to the penalties hereinafter provided.

Section 5. That it shall be unlawful for any person, firm or corporation to seine, trawl for, catch or attempt to catch or have in possession, any salt water shrimp from beyond the waters of the State for use or sale in this State, or from the outside waters of the State, as heretofore described, or from the inside waters of the State, as heretofore described, between the fifteenth day of June, and the fifteenth day of August, both dates inclusive, of any one year. It shall be unlwaful for any person, firm or corporation, otherwise authorized to operate under this act, to seine, trawl for, catch or attempt to catch, any salt water shrimp from the inside waters of this State between the first day of December and the fifteenth day of March, both dates included, and between the fifteenth day of June and the fifteenth day of August, both dates included of any year. Any person, firm or corporation, otherwise authorized under this Act may seine, trawl for, catch or attempt to catch any salt water shrimp from the outside waters of

this State, as hereinbefore described, at any time, except between June fifteenth and August fifteenth of each year, [fol. 20] both dates included, and except between February first and March fifteenth of each year, both dates included. The remaining portions of the year shall be known as the open season and salt water shrimp may then be taken by any person, firm or corporation, herein otherwise authorized to do so, from any of the waters of the State and may be had in possession for sale, drying or canning, subject to the conditions stipulated in this Act. Salt water shrimp, legally taken and dried or canned within this State and upon which the license and severance taxes have been paid as required by this Act, may be bought and sold at any time. Salt water shrimp in their fresh state, legally caught during the open season, may be had in possession for drying or canning, or sale in their fresh state, for five (5) days after the end of the open season. It is not intended by the provisions of this Act to interfere with the fishermen securing shrimp for bait; or for home consumption or the local markets, in their fresh state, provided they are taken from the outside waters of the State; and provided further that shrimp for bait may be secured from either the inside or outside waters of the State at any time.

Section 6. That it shall be unlawful to take from the waters of the State for the purpose of sale in their fresh state, or for drying or canning, any salt water shrimp that measure less than four (4") inches in length from the tip of the spear or rostrum to the end of the tail fin, and it shall be unlwaful to have any salt water shrimp in possession in this State, measuring less than four (4") inches in length irrespective as to where they may have been caught. This restriction as to size for salt water shrimp shall not apply to those taken for bait, nor shall it apply to "sea bobs" nor "six barbes" taken during the open seasons from the outside waters for drying purposes.

Section 7. That it shall be unlawful for any person, firm [fol. 21] or corporation, otherwise authorized to catch salt water shrimp by using a seine which exceeds ten (10) fathoms in length, a trawl or any other device, except by authority of a license issued by the Department of Con-

servation, authorizing the use of such seines, trawls or other devices. The Department of Conservation is authorized to prohibit the using of trawls or seines in any of the inside waters of the State at any time, when in the opinion of the Department of Conservation, the using of such trawls or seines in the inside waters of the State for the taking of salt water shrimp is detrimental to the interests of the State and to the shrimp industry, provided that such action shall only be taken after a hearing on the part of the Department of Conservation of the parties interested or affected, and reserving to the parties affected a right to appeal from the ruling of the Department of Conservation to any court of competent jurisdiction for a review of the issue presented. Seines of ten (10) fathoms or less in length may be used in the taking of salt water shrimp from the waters of the State without permission or license from the Department of Conservation.

Section 8. That it shall be unlawful, in catching or taking salt water shrimp from the waters of this State, to use any seine, trawl or other device, with a mesh less than three-quarters of an inch (¾") square.

Section 9. That it shall be unlawful for any person, firm or corporation to sell, exchange, expose, offer for sale or exchange, or have in possession for sale, packing, canning, or drying, either for himself or others, any salt water shrimp that have been caught from any of the waters of the State during the close seasons herein provided for, except as otherwise provided herein. The prohibition against possession for the purpose aforesaid shall apply to all shrimp taken from beyond the waters of the State of Louisiana.

[fol. 22] Section 10. That it shall be unlawful to set or draw, or attempt to set or draw any seine of ten (10) fathoms or upwards in length, or any trawl, or any other device, in any waters of this State for the purpose of catching or attempting to catch any salt water shrimp, unless an annual license fee has been paid thereon to the Department of Conservation at the rate hereafter noted, and the said license evidencing said payment is to be at all times had in possession to be shown on demand of any duly authorized officer. Said licenses shall be issued by the

Department of Conservation, and the proceeds thereof shall be turned into the State Treasury and placed to the credit of the Department of Conservation. The license required for the operation of seines shall be graded as follows: For all seines over ten (10) fathoms in length up to and including seventy-five (75) fathoms in length the lincense fee shall be Five Dollars ($5.00), on all seines exceeding seventy-five (75) fathoms in length up to and including three hundred (300) fathoms in length, the license fee shall be Fifteen Dollars ($15.00) and on all seines exceeding three hundred (300) fathoms in length the license fee shall be Twenty Dollars ($20.00), which said sum shall be paid by the owner or operator of said seine. For every trawl operated for catching shrimp the annual license fee shall be Ten Dollars ($10.00). Should any salt water fish or crustaceans, other than shrimp happen to be caught in said seine or trawl drawn for the purpose of catching salt water shrimp, no separate or additional license shall be exacted. If devices other than seines or trawls are used, the Department of Conservation is authorized to fix annual licenses therefor on a reasonable basis as experience and practice may develop, and in accord with the licenses hereinabove fixed for seines and trawls.

These license fees shall be due on the date fixed by the Department of Conservation and those operating in the [fol. 23] shrimp industry shall secure the required licenses in advance. In the event of a failure on the part of any person, firm, or corporation to secure the required license a penalty of ten percent (10%) of the license shall be charged by the Department of Conservation for any delay not exceeding thirty (30) days in obtaining said license, a penalty of twenty-five percent (25%) shall similarly be charged for any delay exceeding thirty (30) days and not exceeding sixty (60) days and a penalty of fifty percent (50%) of said license shall be similarly charged for any delay exceeding sixty (60) days but not exceeding one hundred twenty (120) days in the obtaining of said license. In the case of any delay exceeding one hundred twenty (120) days in obtaining of said license, when it should have been properly obtained, the Department of Conservation is vested with authority to refuse to issue said license for the balance of the said season.

Section 11. That all seines or ten (10) fathoms and upwards in length, all trawls, and all other devices set or used for the purpose of catching salt water shrimp in or upon any of the waters of this State must have the official license tag attached thereto, or in the possession of the operator, said tag to be of metal and to be issued by the Department of Conservation and to be furnished without extra charge, upon the payment of the license fee at the rates noted herein.

Section 12. That there be and are hereby levied severance taxes on all salt water shrimp taken from the waters of this State for drying or canning purposes, or for sale in their fresh state, within the State of Louisiana, as follows: A severance tax of ten cents (10c) per barrel, said barrel to contain two hundred ten pounds (210) of shrimp, is hereby levied on all salt water shrimp taken for canning [fol. 24] purposes or for use or sale in their fresh state, and a severance tax of thirty-five cents (35c) per hundred pounds (100) is hereby levied on all salt water shrimp taken for drying purposes, said severance tax on dried shrimp to be computed and collected on said shrimp after having been dried. The taxes shall be paid on delivery of shrimp sold for use in their fresh state by the catcher, or dealer. The tax on shrimp canned or dried shall be paid by the canner, dryer, or dealer at the end of each month, on or before the tenth of the following month. A statement must be made under oath on blanks furnished by the Department of Conservation, and must accompany each payment. These taxes, when collected by the Department of Conservation, shall be deposited to the credit of the Department of Conservation with the State Treasurer, and shall be used by the Department of Conservation for the purpose of carrying the provisions of this law into effect, in protecting and developing the shrimp industry, and in the general work of the Department of Conservation. A barrel or any part thereof, which has paid this tax shall not again pay the tax, and the monthly official receipts of the Department of Conservation shall be evidence of the payment of the severance tax on all shrimp sold for use in their fresh state, and on all shrimp canned during said mnth. The official receipts of the Department of Conservation, when in the hands of the dryer or dealer, shall be evidence of the

payment of the tax on all shrimp dried or handled by him for said month.

The person, firm or corporation paying the original tax on dried shrimp must furnish a certificate of sale with each and every portion of dried shrimp disposed of from any lot on which the tax has been paid, or will be paid by him or them, on blanks furnished by the Department of Conservation. Said certificate shall be made in duplicate, and a copy of each immediately mailed to the office of the Department of Conservation in New Orleans. The Department of Conservation is authorized to seize any shrimp in [fol. 25] the hands of canners or dealers, or their assignees, vendees, or consignees, upon which the tax has not been paid after demand for payment by the Department of Conservation, and to sell such shrimp for the purpose of realizing the payment of the tax, and the surplus from the proceeds of sale, after deducting the tax and all costs and charges, shall be paid to the owner of the shrimp seized. Whenever any willful attempt is made to defraud the Department of Conservation out of the payment of any tax herein imposed any shrimp involved in such willful fraudulent tax evasion shall be forfeited to the State as represented by the Department of Conservation. These severance taxes shall be payable to the Department of Conservation within a period of thirty (30) days from the end of the month without any penalty. Upon a failure of any person, firm or corporation to pay said severance taxes within said thirty (30) day period, a penalty of ten percent (10%) per month calculated upon the severance tax due, shall be levied and collected by the Department of Conservation in addition to the severance tax upon all in default in the matter of the payment thereof. The levy in payment of a servance tax as herein provided shall not be construed as a grant to the person, firm or corporation against whom the same is levied or by whom the same is paid or any right of property or ownership in the shrimp or parts thereof so severed or the right to transport the hull or shell and head of such shrimp outside of the State of Louisiana.

Section 13. All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the

State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

In order that all of the inhabitants if the State of Louisi- [fol. 26] ana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State, or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tailmeat and shall have the right to sell such shrimp tail meat or ship the same beyong the limit of the State, without restriction or reservation.

It shall be the duty of all licensees operating under the Department of Conservation in the shrimp industry in this State to conserve for fertilizer purposes all shells or hulls and heads of salt water shrimp and to report monthly, on blanks to be furnished by the Department of Conservation, the quantity thereof on hand, to the Department of Conservation. It shall be unlawful to export from the State of Louisiana any raw shells or hulls and heads of salt water shrimp as they are required to be manufactured into fertilizer or used for an element in chicken feed. When the shrimp hulls or shells and heads shall have been conserved for the purpose herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof. Any person, firm or cor- [fol. 27] poration violating the provisions of this section shall be liable to the penalties hereinafter imposed.

Section 14. That every license issued by the Department of Conservation to any resident person, firm or corporation,

under the laws of the State authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes, shall be issued only upon a written application in which it shall be stipulated, as a matter of contract, that the applicant will faithfully and fully comply with the laws of this State and the rules and regulations of the Department of Conservation, and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in the shrimp industry that does not fulfill the requirements of the specifications of the Board of Health of the State of Louisiana adopted for sanitary regulation, the right of appeal being reserve to such applicant to the court having jurisdiction thereof to review the findings of the Department of Conservation on the subject.

Section 15. That it shall be unlawful for any person, firm or corporation to engage in the business of canning, packing or drying shrimp at any point or place in the State of Louisiana for commercial purposes without having first received from the Department of Conservation an annual license so to do, and the Department of Conservation is hereby authorized and required to issue such licenses and to charge for said license and to collect therefor the sum of Twenty-Five Dollars ($25.00) for each factory and Fifteen Dollars ($15.00) for each drying platform used for the drying of shrimp, either in whole or in part not actually caught by the owner thereof, so licensed. These [fol. 28] licenses shall be issued and renewed annually and shall be issued on forms to be provided by the Department of Conservation. When such licenses are so secured such persons, firms or corporations may then lawfully engage in said business subject to the provisions of this Act. The proceeds of these licenses, when collected by the Department of Conservation, shall be deposited to the credit of the Department of Conservation with the State Treasurer and shall be used by the Department of Conservation for the purpose heretofore set forth.

Section 16. That all freight and ice boats carrying shrimp taken from Louisiana waters for sale in their fresh state, or for canning, packing and drying in Louisiana, must first obtain from the Department of Conservation of Louisiana a license at the rate of Five Dollars ($5.00) per annum, and the said annual license evidencing said payment shall be at all times on board of said vessel and shall be shown on demand of any duly authorized officer. All such vessels shall keep in writing a manifest of their cargo, a copy of which shall be filed on each trip with the canning factory or drying platform or dealer to which delivery of the cargo shall be made and such manifest shall at all times be open to the inspection of any duly authorized agent of the Department of Conservation. Said licenses shall be issued by the Department of Conservation and the proceeds thereof shall be turned into the State Treasury and placed to the credit of the Department of Conservation.

Section 17. That the Department of Conservation of the State of Louisiana is hereby required to maintain such patrol vessels in the waters of the State of Louisiana, where salt water shrimp are taken, as will insure the carrying out of the enforcement of the provisions of this act. For the purpose of carrying into effect the provisions of this Act and the rules and regulations of the Department of Conservation of the State of Louisiana, inspectors, employees of the Commission, Captain and members of the crews of [fol. 29] all vessels, in the service of the Commission are hereby constituted peace officers with the power to arrest on view, without warrant, any one violating the provisions of the law, and it shall be the duty of all Captains and crews to lend their assistance and the assistance of their vessels to any employee of the Commission in making arrests. The vessels used in patrolling the waters of the State shall be suitably armed and the Conservation Commissioner shall have the power to appoint conservation agents with the authority to carry arms concealed while in the performance of their duty, and who shall have power under the law to enforce the provisions of this Act for the protection of salt water shrimp as a natural resource of the State.

Section 18. To the end that a valuable food product may be preserved for the benefit of the people of the State of

Louisiana the provisions of this Act shall be broadly construed to conserve this end. In the event that any Section or portion of this Act shall be held for any reason to be invalid or unconstitutional the remaining portions of this Act shall continue in full force and effect.

Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any provisions of this Act, where a punishment has not been otherwise provided, shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than Twenty-Five Dollars ($25.00) or not more than One Hundred Dollars ($100.00) for the first offense, nor less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for the second offense and for the third offense the fine shall not be less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days or may impose [fol. 30] both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violations may be confiscated by order of the Court.

Vessels, their tackle and appar-tus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken from the waters of this State, shall be seized and taken into possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the Conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred, the Sheriff being authorized to permit of the release of said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction, providing for the return of such vessel and its apparel and apparatus to abide the judgment of the Court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such

vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the Court of violating the provisions of this law prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or to imprisonment of not less than six months (6) nor more than one (1) year and shall be liable to both fine and imprisonment in the discretion of the Court. [fol. 31] Section 20. That all fines collected through the Courts under the provision of this Act shall be paid to the treasurer of the School Fund of the parish for the use of the public schools of the parish in which the violation occurred, and the Sheriff shall receive ten per cent (10%) for the Collection of such fines turned over to the said treasurer.

Section 21. That all laws or parts of laws contrary to or in conflict with the provisions of this Act be and the same are hereby repealed, provided that, in order to permit canning factories located beyond the limits of the State which have heretofore been permitted to take salt water shrimp out of the State for canning purposes to adjust their business to the conditions imposed by this act, the provisions of this Act which require all salt water shrimp to be peeled or removed from their hull or shell in Louisiana and the shrimp head and hull or shell to be left in Louisiana shall not go into effect until June 15th, 1927, as to those shrimp canners who shall have obtained from the Department of Conservation permits permitting such canneries until June 15th, 1927, to remove from the state salt water shrimp unpeeled for canning in factories located beyond the limits of the State, conditioned upon the right being reserved to the Department of Conservation of Louisiana to revoke any such permit upon the failure to be determined as a matter of fact, after hearing, by the Department of Conservation of Louisiana, that such permittee or licensee has f-iled to

comply with the conditions imposed in such permit, and the Commissioner of Conservation shall be authorized to issue permits in accordance herewith, which permits shall expire June 15th, 1927.

It is the intention and sense of this exception that the canning factories located out of the State which have hereto-
[fol. 32] fore gotten their salt water shrimp from Louisiana shall be permitted to continue to do so under former conditions, until June 15th, 1927, except that the closed seasons herein established shall become effective upon the due promulgation of this Act.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING TEMPORARY RESTRAINING ORDER.—Filed September 7, 1927

This day this cause came on to be heard on the application of the complainants for a temporary restraining order and it appearing to the Court from the allegations of the original bill of complaint, duly verified, and proof offered before the Court that the complainants will sustain irreparable injury and damage unless the restraining order prayed for be issued, and it appearing to the Court that such restraining order should be issued, it is ordered, adjudged and decreed that the clerk of this court issue a temporary restraining order, commanding and requiring the defendants, and each of them, their agents, servants and attorneys, to desist from in any manner preventing or interfering with the execution of that certain contract entered into between the complainants in said cause, and the said defendants and each of them, their agents, servants and attorneys, be and are hereby restrained and commanded to desist from the enforcement of Act No. 103 passed by the Legislature of the State of La. approved July 8th, 1926, in so far as the same renders illegal the contract between the complainants made exhibit to the original bill of complaint in this cause; and that the said defendants, and each of them, their agents and servants, are restrained from, and

commanded to desist from prosecuting the complainants, or either of them, their agents, and servants, for a violation of Section 4 and Section 13 of said Act.

It is further ordered, adjudged and decreed by the court that a three Judge court be composed of Hon. Rufus E. Foster, Circuit Judge and Hon. L. H. Burns and E. R. Holmes, District Judges, organized to be held on or before ten days from this date for the purpose of hearing and determining complainants' application for a permanent injunction pending the final hearing of this cause.

Ordered, Adjudged and decreed this the 6th day of September, 1927.

(Signed) E. R. Holmes, District Judge.

[fol. 34] IN UNITED STATES DISTRICT COURT

MARSHAL'S RETURN ON COPY OF TEMPORARY RESTRAINING ORDER—Filed September 16, 1927

Received by U. S. Marshal, New Orleans, La.

Sept. 7/27. And on the same day, month and year, I served a true copy hereof on Valentine K. Irion, by handing the same to him in person in New Orleans, La. Percy Saint, Atty. Gen. State of La. by leaving the same in the hands of E. R. Schonwalter, Asst. Atty. Gen. in his office in N. O. La., and on the 8th day of the same month and year I served copy hereof on Louis A. Mereaux, Sheriff of St. Bernard Parish, La., by handing the same to him in person in St. Bernard Parish, La., and on the 12th day of same month and year I served copy hereof on Ernest Alberti, Sheriff of Plaquemine Parish, La., by handing same to his Chief Deputy, W. L. McCormick, in person, in the office of the sheriff at Pointe-a-la-Hache, Plaquemine Parish, Louisiana, and on the 13th day of the same month and year I served copy hereof on E. J. Haydel, Fred Schouest and L. R. Cabriac by handing the same to Edward Burke, Port Capt. for the Department of Conservation in person in New Orleans, La., and on the 15th day of the same month and year I served copy hereof on Leander H. Perez, District Atty. for the Parishes of St.

Bernard and Plaquemines, State of Louisiana, by handing the same to him in person in New Orleans, La.

(Signed) Victor Lo.sel, U. S. Marshal, by E. M. Kinler, Dy.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR PERMANENT INJUNCTION—Filed Sept. 9, 1927

Comes Foster Fountain Company Inc. and the Seafood Company, Complainants, and move the court to grant a permanent injunction pending the hearing and determination of this cause on the original bill of complaint, demurrer, restraining order and proof offered in support thereof.

(Signed) Rushing & Guice, Watkins, Watkins & Eager, Attorneys for Complainants.

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING HEARING APPLICATION PERMANENT INJUNCTION—Filed September 9, 1927

It appearing to the Court that the Honorable Rufus E. Foster and Louis H. Burns are absent from the State of La. and the Fifth Circuit and will not return within ten days from this date, it is ordered, adjudged and decreed that the application of the complainants for a permanent injunction be and is hereby continued from day to day, that the temporary restraining order, heretofore issued in said cause remain in force, pending the hearing of said application.

That a definite date for the hearing of said application will be fixed to suit the convenience of Court and Counsel, due notice of which will be given not to be tried later than October 12th, 1927 unless otherwise ordered by the Court.

Ordered adjudged and decreed, this the 8th day of September, 1927.

(Signed) E. R. Holmes, District Judge.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING APPLICATION FOR INJUNCTION TO FINAL HEARING—Filed September 30, 1927

Complainants and defendants agreeing thereto, it is ordered, adjudged and decreed that the application of the complainants for a temporary injunction pending final hearing of this cause be and is hereby passed and continued to the hearing and determination of this cause on the merits, the same to be heard, tried and determined by the Court of three Judges heretofore organized, composed of Rufus E. Foster, E. R. Holmes, and Louis H. Burns, District Judges.

It is ordered, adjudged and decreed that the defendants have Thirty days from this date within which to file answer or other pleas to the original bill of complaint, and that the temporary restraining order heretofore issued be and remain in force until the trial and determination of said cause on the merits.

Ordered, adjudged and decreed this, the 28th day of September, 1927.

(Signed) E. R. Holmes, District Judge.

The foregoing order is approved.

(Signed) Percy Saint, Atty. General, by Michael M. Irwin, Asst. to Atty. Gen., Attorneys for Complainants. W. H. Watkins, W. L. Guice, Lemle, Moreno & Lemle, Attorneys for Defendants.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLEA OF ESTOPPEL

Now into this Honorable Court, through undersigned counsel, come Louis A. Meraux, Sheriff of the Parish of St. Bernard; Ernest Alberti, Sheriff of the Parish of Plaquemines; Leander H. Perez, District Attorney for the Parishes of St. Bernard and Plaquemines; Percy Saint, Attorney General of the State of Louisiana; Valentine K.

Irion, Commissioner of Conservation of the State of Louisiana; E. J. Haydel, Fred Schouest and L. R. Cabriac, made defendants in the above numbered and entitled cause, and aver as follows:

That plaintiffs herein are estopped from setting up the illegality and constitutionality of Act 103 of the Legislature of Louisiana of the year 1926, for the reason that said Act in its now form was agreed to by individuals duly authorized to act on behalf of various Mississippi packing interests, among whom are complainants; that said Act in its now form was passed as a compromise in order to permit Mississippi interests to acquire factory sites in Louisiana as provided in aforesaid Act; that parties representing the Mississippi packing interests having participated in discussions during the preparation and drafting of said Act, actually contributed to its final passage in its new form; that having agreed to it in the form in which it was passed by the Legislature of the State of Louisiana, and having gotten the benefit of the one year's delay for which they asked, complainants are estopped, as their contention is without equity.

[fol. 39] That of the fact that plaintiffs herein have applied for and have received licenses since the passage and adoption of Act 103 of 1926 for the taking of salt — shrimp from the waters of Louisiana, which licenses and permits constitute by its very terms a contract between plaintiffs and the State of Louisiana, and they are therefore estopped from contesting any section or sections of the aforesaid Act, as to its constitutionality.

Wherefore, your movers pray that this plea of estoppel be maintained and plaintiffs' suit be dismissed at their cost. Movers further pray for all other orders and decrees necessary in the premises; and for all general and equitable relief.

Percy Saint (Signed) Attorney General of Louisiana; Peyton R. Sandoz (Signed) Assistant Attorney General.

I hereby certify that the above and foregoing pleading to the jurisdiction of the Court, filed in behalf of the defendants herein, is filed in good faith and not merely for the purpose of delay.

Peyton R. Sandoz (Signed).

[fol. 40] AFFIDAVIT OF PERCY VIOSCA, JR.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Percy Viosca, Jr., to me well and personally known, who being duly sworn by me did depose and say:

That he is the Director of the Fisheries Division of the Department of Conservation of the State of Louisiana, and has held this position since April 2, 1927, prior to which time, that is to say, from July 18, 1918, to April 2, 1927, he was employed as Biologist for the Department of Conservation of the State of Louisiana. That his employment has required him to make a scientific study of the habits and migrations of Louisiana shrimp, particularly of salt water shrimp; that during his employment he made several reports pertaining to the edible shrimp of Louisiana and that a summary of his studies has been published in the Fourth Biennial Report of the Department of Conservation of Louisiana on or about April 1, 1920.

Affiant avers that his opinions as to the migration of shrimp are accepted at face value by scientific men throughout the United States and have been mentioned in publications under his authorship, which have appeared in various scientific journals. That part of the Louisiana Shrimp Law officially designated as Act 103 of 1926, which pertains to the conservation of living shrimp in Louisiana waters is based upon scientific study made by the affiant.

Affiant ascribes the abundance of common salt water shrimp in Louisiana to two factors: (1) Mud bottoms of alluvial origin, which is their favorite habitat and in which they can conceal themselves from their enemies by burying themselves, since they do not live amongst vegetation as do most other species of shrimp; and (2) to the abundance of the chief food of immature shrimp, which consists mainly [fol. 41] of roots, stems and leaves of salt marsh grasses, which are constantly washed into the lakes and bays of our salt marshy country by the waves and by receding tides.

The chief purpose of the present Louisiana Shrimp Law is to conserve these immature shrimp until they reach the marketable size, as large quantities of them are sometimes

destroyed illegally before they reach the size of economic value.

Affiant avers that his scientific study of the life and habitat of Louisiana shrimp has been persistent and with the view of ascertaining all the information of value in regard to that important natural resource of the State of Louisiana.

Affiant avers that some of his knowledge has been gained by hundreds of observations and accurate measurements taken at all seasons of the year by seines, trawls, tow-nets, cast-nets, dredges, etc., which date he has prepared and condensed in the form published in the Biennial Report hereinabove referred to.

Affiant avers that he has confirmed his information as to the kind and character of food upon which these shrimp thrive by miscroscopic examinations; affiant also avers that his knowledge of adult and immature shrimp, also at different ages and sizes, has also been arrived at by a thorough microscopic study of the internal organs of both adult and immature shrimp.

Affiant avers that he has specialized in Biology by virtue of his education in that branch of science at Tulane University and by reason of special courses which he has taken to enhance his knowledge on the subject.

Affiant avers that as the head of the Fisheries Division of the Conservation Department he is prepared to state of his own knowledge that there is no evidence in possession of the Department of Conservation coming through its agents, or otherwise, which indicates that the shipments of shrimp procured from the waters of the State of Louisiana have been shipped outside of the State without first removing the heads and hulls therefrom and especially since Act 103 of 1926 became effective.

Affiant avers that the aforesaid Act 103 of 1926 does not relate to the head and hulls of shrimp caught outside of the waters of the State of Louisiana, nor beyond the [fol. 42] three mile limit in the Gulf of Mexico; that the Conservation Department has no jurisdiction over shrimp caught in the Gulf of Mexico outside of the three mile limit, and such shrimp as may have been shipped from the State of Louisiana since the adoption of Act 103 of 1926, have, so far as affiant knows, and so far as the records of the

Department of Conservation show, *have* been only of such shrimp as have been caught beyond the limits of the State of Louisiana and these are not the character of shrimp contemplated by the provisions of the aforesaid Act 103 of 1926.

Affiant knows of his own knowledge that large quantities of shrimp are caught in the waters outside of the State of Louisiana at all seasons of the year, but that these shrimp are not within the jurisdiction of the Conservation Department.

Affiant knows of his own personal knowledge that there have been no salt water shrimp caught in the waters of Louisiana since the adoption of the aforesaid Act 103 of 1926 and shipped beyond the limits of the State of Louisiana, unless they have been so caught and so shipped in a surrepti-ious and illegal manner, despite the vigilant activity of the agents of the Conservation Department to detect all violators of the law; that no such ssrimp is being caught and shipped to the knowledge of anyone connected with the Fisheries Division of the Department of Conservation, nor have any such shipments been permitted on appeals, affidavits or otherwise, to the knowledge of the Fisheries Division of the Department of Conservation of Louisiana.

Affiant avers that shrimp factories in Louisiana are located both on the east and west of the Mississippi River and affiant attaches hereto a list of the licensed canneries and drying platforms located in the State of Louisiana, according to the records of the Department of Conservation, which aforesaid list is attached hereto and made a part hereof, and is marked Exhibit "A".

Affiant avers that there are no shrimp factories at Homer, Louisiana, but that there are such factories located at Houma, Terrebonne Parish, Louisiana.

[fol. 43] Affiant avers that there is a difference in the shape and color of the shrimp caught in inland lakes and bays of Louisiana and those caught in the open Gulf, with the exception that in periods of very low water or excessively rainy seasons, immature shrimp of the color usually found in inside waters are sometimes carried out to sea and will occasionally be found to be mixed with adult sea shrimp of different appearance.

Affiant avers that there is no record of adult salt water shrimp ever being taken in inside waters of the State of Louisiana.

Affiant avers that the Complainant, Foster-Fountain Company, Inc., while alleging in its Bill of Complaint that salt water shrimp have been caught in Louisiana waters and shipped with hulls and heads on beyond the limits of the State, that no evidence of such shipments have been tendered to the Department of Conservation of Louisiana; but, on the contrary, all certificates relating to the shipment of shrimp required to be filed under oath with the Conservation Department of Louisiana have indicated and evidenced that all such shipments of shrimp have been made only after the shrimp have been picked, said certificates being identical in form with that which the Complainant, Foster-Fountain Company, Inc., has filed with the Conservation Department of Louisiana, as of October 21, 1927, the original of which is hereto annexed and made a part hereof and is marked Exhibit "B".

Affiant avers that permits are issued by the Department of Conservation to persons, firms and corporations desiring to catch salt water shrimp within the limits of the State of Louisiana and that said permit is a contract between the applicant and the State of Louisiana by which the applicant agrees that he shall comply with every provision of law, particularly Act 103 of 1926 relating to the catching, drying and packing of shrimp within the State of Louisiana, and that the Complainant, Foster-Fountain Co., Inc., has ever since the adoption of said Act 103 of 1926 filed the required applications for permission to take salt water shrimp from Louisiana waters, which aforesaid applications and permits have contained the contractural obligation referred to, the last applications and permits of the aforesaid Foster-Fountain Co., Inc., having been filed [fol. 44] and issued as of date September 1, 1927, as evidenced by the aforesaid application of the Foster-Fountain Co., Inc. hereto attached and made a part hereof and marked Exhibits "S."

Affiant further avers that identical applications and permits by the Complainant, Sea Food Company, were made by said Sea Food Company and granted by the Department of Conservation as of date September 12, 1927, as per

original application hereto annexed and made a part hereof and marked Exhibit "E".

Affiant avers that a similar application was made by Complainant, Foster-Fountain Co., Inc., to operate boats solely within Louisiana waters for the transportation of shrimp within the limits of Louisiana and not beyond, as evidenced by the application of the said Foster-Fountain Company, Inc., dated September 1st, 1927, a certified copy of which is hereto annexed and made a part hereof, marked Exhibits "G" and "H".

Affiant avers that he makes the foregoing declarations solely of his own knowledge and not from hearsay.

(Signed) Percy Viosca, Jr.

Sworn to and subscribed before me at the City of New Orleans, State of Louisiana, on this 27th, day of the month of October, 1927.

(Signed) H. J. Stansbury, Notary Public, Dy. Clerk Court of Appeal Parish of Orleans.

[fol. 45]

EXHIBIT "A" TO AFFIDAVIT

Resident Salt Water Shrimp Canning & Packing License

1927. $25.00. 1928.

No.	Name	Address	Date	Factory located
198	Berengher Canning Co.	Berengher, La.	8-1-27	Berengher.
199	Biloxi Canning Company.	Lockport, La.	5	Lockport.
200	Martin Fountain Co. Inc.	Lafitte, La.	6	Lafitte.
201	Dunbar Dukate Co. Inc.	Myrtle Grove, La.	12	Myrtle Grove.
202	" " " "	Violet, La.	12	Violet.
203	" " " "	Lafitte (Fisher Plant).	12	Lafitte.
204	" " " "	Westwego, La.	12	Westwego.
205	Foster Fountain Co. Inc.	New Orleans, La.	12	Pearl River.
206	Foster Fountain Co. Inc	New Orleans, La.	12	Golden Meadow.
207	Timbalier Bay Packing Co.	Golden Meadow.	12	Golden Meadow.
208	Robinson Canning Co.	1720 Broadway.	12	Westwego.
209	Lopez Canning Co.	Buras.	17	Buras.
210	C. B. Foster Packing Co.	City Price, La.	26	City Price.
211	Sea Food Company.	Westwego, La.	26	Westwego.
212	E. F. Falgout.	Golden Meadow.	29	Golden Meadow.
213	Golden Meadow Pkg. Co. Inc.	Golden Meadow.	9-9-27	Golden Meadow.

[fol. 46] Resident Salt Water Shrimp Drying Platform Licenses

1927. $15.00. 1928.

No.	Name	Address	Date	Platform located
126	Fou Loy & Co.	1113 Tulane Ave., New Orleans.	8-26-27	Basa Basa.
127	Quong Sun Co. Inc.	525 St. Louis St., New Orleans.	26	Bayou Defon.
128	Quong Sun Co. Inc.	525 St. Louis St., New Orleans.	26	Bayou Colas.
129	Leon Rojas.	Cabinash, P. O.	27	Grand Bayou.
130	E. F. Falgout.	Golden Meadow.	29	Golden Meadow.
131	Hing Long Co.	1111 Tulane Ave., New Orleans.	9- 1-27	Sister Lake.
132	Benoit, Joe.	Dulac.	10-1 -27	Bayou Solard.
133	Engeran, P. J.	Houma.		Houma.
134	Grand Caillou Packing Co. Inc.	Dulac.		Dulac.
135	Bourg, Harry.	Dulac.		Dulac.
136	Naquin, Victor.	Montegut.		Lacroix.
137	Blum & Bergeron.	Houma.		Sea Breeze.
138	Chauvin & Buquet.	Dulac.		Dulac.

[fol. 47] EXHIBIT "C" TO AFFIDAVIT

Copy

Resident Application for Permission to Use a Seine or Trawl for Taking Salt Water Shrimp from Louisiana Waters or a Vessel for Freighting Such Shrimp

We, Foster Fountain Co. of New Orleans, La., hereby make application to the Department of Conservation of Louisiana for permission to use trawls; seines not over 300 fathoms in length; and seines exceeding 300 fathoms in length. The trawls to be used from the

Motorboat	Miss Irma
"	Good Bros.
"	Bobbie
"	Giacamo
"	Chas. Redding

The seine to be used from——
(In each case give kind of vessel, name of vessel and length of the seine each vessel is to use.)

The shrimp to be freighted by——
(Give kind of vessel or vessels and name or names.)

and we hand you herewith check for $50.00, to pay for the same. Contingent upon granting of said permission, we agree to strictly conform with the following laws of the State of Louisiana:

1st. No seine or trawl having a mesh less than three quarters of an inch (¾") square may be used. And no seine measuring longer than stated in the license can be used until after said license has been exchanged for one of the required length. Sections 8 and 10 of Act 103 of 1926.

2nd. No seine or trawl may be used for taking shrimp for drying or canning from waters restricted by Sections 5 and 7 of Act 103 of 1926 or during the close seasons fixed in Section 5 of Act 103 of 1926.

3rd. No shrimp measuring less than is stipulated in Section 6 of Act No. 103 of 1926 may be taken by any trawl or seine for which license has been herein applied.

4th. All shrimp taken under authority of any license herein applied for must have shells or hulls and heads

treated in accordance with Section 13 of Act No. 103 of [fol. 48] 1926.

5th. All license fees and severance tax payments must be made to the Department by Check, Draft, Express Money Order or Post Office Money Order, may payable to the Department of Conservation of Louisiana.

6th. We hereby agree that any evasion or violation of the above laws or any other laws adopted by the Legislature of Louisiana for the control of shrimp or shrimp fishing or of any of the provisions of the shrimp laws of Louisiana (Act No. 103 of 1926) by ourselves or any of our employees shall be considered sufficient cause for immediate annulment of all licenses and permits issued us by the Department of Conservation and that we will make no demand upon the Department of Conservation of Louisiana, for the return of the money that has been paid for the same. And to all other penalties provided by law.

In witness Thereof We hereby affix our signature at—— this — day of ——, 19—.

Foster Fountain Co.
by Desporte, Jr.

Witness:————————
Address:————————

Note:—Section 14 of Act No. 103 of 1926 reads as follows:

"That every license issued by the Department of Conservation to any resident person, firm or corporation, under the laws of the State, authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes shall be issued only upon a written application in which it shall be stipulated as a matter of contract that the applicant will faithfully and fully comply with the laws of this State, and the rules and regulations of the Department of Conservation and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in the shrimp industry that does not fulfill the requirements of [fol. 49] the specifications of the Board of Health of the

State of Louisiana adopted for sanitary regulations, the right of appeal being reserved to such applicant to the Court having jurisdiction thereof to review the findings of the Department of Conservation on the subject."

Received————————Date 9-1-27
OK. No.————————
On First Nat'l Biloxi
From Desporte Pkg. Co. for Foster Fountain Co.
For S. Trawles, 6694 to 6698
$50.00 Duplicated Receipt.
C. K. B. per copy.

[fol. 50] Department of Conservation of Louisiana
New Orleans Court Bldg., New Orleans

"Exhibit B" to Affidavit

W. J. Everett, Commissioner.

We, Foster Fountain Co. of West Side Pearl River, La. hereby certify that we have received only 1640 barrels of shrimp of 210 pounds each from Aug. 15th, 1927 to Oct. 1st, 1927, and that the same were sold fresh after being picked. (State whether canned or sold fresh. If canned, state in detail where canned and if sold fresh, state where in detail.)

We solemnly swear to the best of our knowledge and belief this statement is true and correct.

(Sgd) Foster Fountain Co. Inc.
R. Hart Chinn Secty & Mgr.

Sworn and subscribed to before me a Notary Public at Biloxi, Miss, Parish of——— State of Louisiana, this 21st day of October, 1927.

(Signed) W. J. Grant, Notary Public. (Seal.)

Note: These statements must be submitted to the Department and the payment of the severance tax of ten cents (10c) per barrel must be made on or before the tenth (10th) day of each month following, beginning August 1, 192–. All checks or drafts must be made payable to the department of Conservation of Louisiana and mailed to

Room 124, New Orleans Court Building, New Orleans, La., or handed personally to a representative of the Department.

[fol. 51] EXHIBIT "E" TO AFFIDAVIT

Resident Application for Permission to Use a Seine or Trawl for Taking Salt Water Shrimp from Louisiana Waters or a Vessel for Freighting Such Shrimp

Dept. of Conservation, Received Sep. 13, 1927

We Sea Food Company of Westwego, La., hereby make application to the Department of Conservation of Louisiana for permission to use 1 trawls; 1 sienes not over 200 fathoms in length; — seines not over 300 fathoms in length; and — seines exceeding 300 fathoms in length. The trawls to be used from the (Kind of vessel and name) Gas Boat Olivette, 1 Trawl and 1 Seine License for above named boat. The seine to be used from (In each case give kind of vessel, name of vessel, and length of the seine each vessel is to use.) The shrimp to be freighted by (Give kind of vessel or vessels and *and* name or names). And we hand you herewith Check for $25.00 to pay for the same. Contingent upon granting of said permission, we agree to strictly conform with the following laws of the State of Louisiana:

[fol. 52] 1st. No seine or trawl having a mesh less than three quarters of an inch (¾") square may be used. And no seine measuring longer than stated in the license can be used until after said license has been exchanged for one of the required length. Sections 8 and 10 of Act 103 of 1926.

2nd. No seine or trawl may be used for taking shrimp for drying or canning from waters restricted by Sections 5 and 7 of Act 103 of 1926 or during the close- seasons fixed in Section 5 of Act 103 of 1926.

3rd. No shrimp measuring less than is stipulated in Section 6 of Act No. 103 of 1926, may be taken by any trawl or seine for which license has been herein applied.

(Appears on Reverse)

4th. All shrimp taken under authority of any license herein applied for must have shells or hulls and heads

treated in accordance with Section 13 of Act No. 103 of 1926.

5th. All license fees and severance tax payments must be made to the Department by Check, Draft, Express Money Order, or Post Office Money Order, made payable to the Department of Conservation of Louisiana.

6th. We hereby agree that any evasion or violation of the above laws, or any other laws adopted by the Legislature of Louisiana for the control of shrimp or shrimp fishing, or any of the provisions of the shrimp laws of Louisiana (Act No. 103 of 1926) by ourselves or any of our employees, shall be considered sufficient cause for immediate annulment of all licenses and permits issued us by the Department of Conservation, and that we will make no demand upon the Department of Conservation of Louisiana for the return of the money that has been paid for the same. And to all other penalties provided by law.

In Witness Thereof We hereby affix our signature at Biloxi, Miss., this 12th day of September, 1927.

(Sgd.) Sea Food Company, by A. R. Heidenheim.

Witness: (Sgd.) Bert O. Gunn. Address, Biloxi, Miss.

[fol. 53] Note: Section 14 of Act No. 103 of 1926 reads as follows:

"That every license issued by the Department of Conservation to any resident persons, firm or corporation, under the laws of the State, authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes, shall be issued only upon written application in which it shall be stipulated, as a matter of contract, that the applicant will faithfully and fully comply with the laws of this State and the rules and regulations of the Department of Conservation, and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in the shrimp industry that does not fulfill the requirements of the specifications of the Board of Health of the State of

Louisiana adopted for sanitary regulations, the right of appeal being reserved to such applicant to the Court having jurisdiction thereof to review the findings of the Department of Conservation on the subject."

68506 R-J.

[fol. 54] EXHIBIT "G" TO AFFIDAVIT

Resident Application for Permission to Use a Seine or Trawl for Taking Salt Water Shrimp from Louisiana Waters or a Vessel for Freighting Such Shrimp.

Dept. of Conservation, Received Sept. 13, 1927

We, Foster Fountain Co., Inc., of New Orleans, La., hereby make application to the Department of Conservation of Louisiana for permission to use four trawls; — seines not over 200 fathoms in length — seines not over 300 fathoms in length; and — seines exceeding 300 fathoms in length. The trawls to be used from the (Kind of vessel and name) gas boats Mark A, Spica, Marie Inez, Oneida. The seine to be used from (In each case give kind of vessel, name of vessel, and length of the seine each vessel is to use). The shrimp to be freighted by (Give kind of vessel or vessels and name or names) gasboats Ursula C; Whillamene; R. O. C. Elwood F; Winford B; Carl F. And we hand you herewith check for $40.00 to pay for the same.

Contingent upon granting of said permission, we agree to strictly conform with the following laws of the State of Louisiana:

[fol. 55] 1st. No seine or trawl having a mesh less than three-quarters of an inch (¾") square may be used. And no seine measuring longer than stated in the license can be used until after said license has been exchanged for one of the required length. Sections 8 and 10 of Act 103 of 1926.

2nd. No seine or trawl may be used for taking shrimp for drying or canning from waters restricted by sections 5 and 7 of Act 103 of 1926 or during the close seasons fixed in Section 5 of Act 103 of 1926.

3rd. No shrimp measuring less than is stipulated in Section 6 of Act No. 103 of 1926, may be taken by any trawl or seine for which license has been herein applied.

(Appears on Reverse)

4th. All shrimp taken under authority of any license herein applied for must have shells or hulls and heads treated in accordance with Section 13 of Act No. 103 of 1926.

5th. All license fees and severance tax payments must be made to the Department by Check, Draft, Express Money Order, or Post Office Money Order, made payable to the Department of Conservation of Louisiana.

6th. We hereby agree that any evasion or violation of the above laws, or any other laws adopted by the Legislature of Louisiana for the control of shrimp or shrimp fishing, or of any of the provisions of the shrimp laws of Louisiana (Act No. 103 of 1926) by ourselves or any of our employees, shall be considered sufficient cause for immediate annulment of all licenses and permits issued us by the Department of Conservation, and that we will make no demand upon the Department of Conservation of Louisiana for the return of the money that has been paid for the same. And to all other penalties provided by law.

In Witness Thereof We hereby affix our signature- at New Orleans, La., this 30th day of August, 1927.

Foster Fountain Co., Inc. (Sgd.) R. Hart Chinn, Secty. Witness ——, Address ——.

[fol. 56] Note: Section 14 of Act No. 103 of 1926 reads as follows:

"That every liscense issued by the Department of Conservation to any resident persons, firm or corporation, under the laws of the State, authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes, shall be issued only upon a written application in which it shall be stipulated, as a matter of contract, that the applicant will faithfully and fully comply with the laws of this State and the rules and regulations of the Department of Conservation, and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in

the shrimp industry that does not fulfill the requirements of the specifications of the Board of Health of the State of Louisiana adopted for sanitary regulations, the right of appeal being reserved to such applicant to the Court having jurisdiction thereof to review the findings of the Department of Conservation on the subject."
68506 R-J.

[fol. 57] Copy

Department of Conservation of Louisiana

New Orleans, La., Sept. 1, 1927.

Re: Resident Salt Water Shrimp.

Trawl License Nos. 6694—6695 $10.00 each; 6696—6697—6698. For use with gasboats Miss Irma; Good Bros; Bobbie; Giacomo; Chas. Redding.

Requested by Mr. Desporte

Foster Fountain Co., Inc.,
New Orleans, La.,
c/o Foster Fountain Co.,
Biloxi, Miss.

Dear Sir:

We enclose herewith license to use a salt water shrimp trawl from the gasboat named above, until the 30th of next June, subject to the provisions printed thereon.

We are also enclosing a metal tag bearing the same number as the license. This tag must be tacked in a conspicious place in the cabin of the gasboat from which the trawl is operated.

Yours very truly,

Department of Conservation, Percy Viosca, Jr., Director, Fisheries Divison. vd. cc. Desport Packing Co.

[fol. 58] Minute entry of argument and submission Oct. 27, 1927, omitted in printing.

[fol. 59] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF L. O. JOHNSON, JR., AND R. HART CHINN, ON BEHALF OF PLAINTIFF—Filed October 26th, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, Jr., and R. Hart Chinn, residents of Biloxi, Mississippi, each of whom after being by me duly sworn did depose and say:

That affiant, L. O. Johnson, Jr., is thirty-five years of age, has been a resident and citizen of Biloxi, Harrison County, Mississippi, during his entire life, and has been engaged in the handling of shrimp for the past fifteen years, and that affiant R. Hart Chinn is thirty-nine years of age, has been a resident and citizen of Biloxi, Harrison County, Mississippi, for the past thirty-five years, and has been engaged in the handling of shrimp for the past eight years.

That until some five or six years ago there was practically no demand for raw shrimp outside of the local markets, but that during the past three years the demand for raw shrimp outside of the local markets has increased to such an extent that an average of fifty or more barrels of raw shrimp daily are shipped daily to Northern, Eastern and Western markets, and that the demand for such shrimp is steadily increasing.

Affiants further state on information and belief that when the present Louisiana Shrimp Act was pending in the Louisiana Legislature a number of Raw Shrimp Dealers from New Orleans, Louisiana, at the request of Mississippi interests opposing such legislation appeared at Baton Rouge for the purpose, as the Mississippi interests understood, [fol. 60] of opposing such legislation; that on the morning after their arrival in Baton Rouge they appeared for a Committee hearing on this legislation, and before said hearing said Louisiana Raw Shrimp Dealers advised the Mississippi interests that they had decided to favor, rather than oppose, the bill, giving as their reason for changing their position that they had been assured by the Department of Conservation Officials that the law would be en-

forced in such manner as would in no way interfere with the shipment of raw shrimp with the hulls or heads on from New Orleans and other points in the State of Louisiana by Louisiana raw dealers to points outside of the State of Louisiana, provided, however, that such shipments were not to be made to canneries operating in the State of Mississippi, and that said Louisiana Raw Shrimp shippers further stated that with Mississippi canners being prevented from procuring Raw Shrimp from independent and other fishermen within the State of Louisiana that the said Louisiana raw shrimp dealers would be greatly benefited in their efforts to secure raw material at a lower price and in greater quantities, with smaller invested capital, thereby assuring them of a constant supply of raw shrimp to supply an ever increasing demand for raw shrimp with the hulls and heads on for shipment to points outside of the State of Louisiana, and affiants further state that they believe these arguments were used by the Department of Conservation Officials and attorneys representing Louisiana interests favorable to this legislation in their efforts to prevent the delegation of Raw Shrimp Dealers from New Orleans from appearing before the Senate Committee of the Louisiana Legislature for the purpose of opposing such legislation.

Affiants further state on information and belief that the Raw Shrimp Dealers of Louisiana have been allowed to continue the shipment of raw shrimp with hulls and heads on by common carriers in interstate commerce since the present Louisiana Shrimp Act went into effect, in violation of said Act, said shrimp having been procured from the [fol. 61] waters of the State of Louisiana defined and embraced within said Shrimp Act, being the same species and kind of shrimp and taken from the same waters and by the same methods, boats and fishermen as were prevented, by vigorous enforcement methods by the Officials of the Department of Conservation of the State of Louisiana, from being delivered by Foster Fountain Company, Inc., into Mississippi.

Affiants further state on information and belief that the shrimp permitted to be shipped in interstate commerce by the Louisiana Raw Shrimp Dealers, with full knowledge of the Officials of the Department of Conservation of the State of Louisiana, are known by the said Officials to be the

identical shrimp caught in the same waters as were prohibited by said Officials, until enjoined from so doing, from being shipped into Mississippi on boats by Foster Fountain Company, Inc., it being the intention of the Officials of the Department of Conservation of the State of Louisiana to not interfere in any manner whatsoever with the business of the Raw Shrimp Dealers of the State of Louisiana, legal or otherwise, especially with the shipment of raw shrimp with hulls and heads on by said Raw Shrimp Dealers of the State of Louisiana to points outside of the State of Louisiana, it being well known to said Officials of the Department of Conservation of the State of Louisiana that all shrimp caught within the State of Louisiana, with the exception of a small quantity of River Shrimp and limited catches of Gulf shrimp caught only at certain short periods during the season, are shrimp prohibited under the Louisiana Shrimp Act from being shipped outside the State of Louisiana with hulls and heads on; notwithstanding this knowledge, affiants state, on information and belief, that at all seasons of the year shrimp are permitted, by said Officials, to be shipped outside the State of Louisiana, by Louisiana Raw Shrimp Dealers, with hulls and heads on, with no apparent effort being made by said Officials to prevent such shipments by the raw shrimp dealers of the State of Louisiana.

Affiants further state on information and belief that the [fol. 62] Officials of the Department of Conservation charged with the enforcement of the Louisiana Shrimp Act are knowingly permitting the shipment of raw shrimp with hulls and heads on by Louisiana raw shrimp dealers to points outside the state of Louisiana in violation of said act and are fully aware of the subterfuge being used in procuring bills of lading on such raw shrimp from Express Companies and other common carriers, said subterfuge being in the nature of statements or affidavits made by boatmen and others to the effect that said shrimp had been procured outside the limits of the State of Louisiana as prescribed in said Shrimp Act, which said statements and affidavits are known, by said Officials, to be false and made solely for the purpose of enabling Louisiana raw shrimp dealers to make shipments of raw shrimp with hulls and heads on in violation of the provisions of said Shrimp Act.

Affiants further state that if said Officials charged with the enforcement of said act had employed the same diligence in the enforcement of said act relative to shipments by Louisiana raw shrimp dealers by common carriers to points outside the State of Louisiana as said Officials employed in enforcing said Act against the Foster Fountain Company, Inc., prior to the granting of the injunction in this cause, that said raw shrimp dealers in Louisiana would have been seriously injured in their business in that their shipments, if limited strictly to shrimp caught outside the waters of the State of Louisiana as defined in said Shrimp Act, would have been very irregular and in such small quantities as would not have been profitable. Affiants further state on information and belief that the failure of the Officials of the Department of Conservation of Louisiana to diligently enforce the Shrimp Act against the Louisiana raw shrimp dealers as above set out is due to the fact that said Officials are fully aware that a strict enforcement of said Act would result in destroying the industry of shipping shrimp by express for fresh consumption in the large centers of population by the raw shrimp dealers of the State of Louisiana; that said Officials desire to refrain from any act which [fol. 63] would destroy said raw shrimp industry, and for this reason have not used the same amount of diligence in enforcing said act relative to the movement of said raw shrimp with heads and hulls on from the State of Louisiana by common carrier as had been employed against Foster Fountain Company, Inc., prior to the granting of the injunction in this cause, which said methods in the enforcement of said act by said Officials result in a discrimination against Foster Fountain Company, Inc. in the shipment of raw shrimp with hulls and heads on from the State of Louisiana to points outside of said State.

And further affiants sayeth not.

(Sgd.) L. O. Johnson, Jr., (Sgd.) R. Hart Chinn.

Sworn to and subscribed before me this 25th day of October, 1927.

(Sgd.) Antonia Peresich, Notary Public. (Seal.)

[fol. 64] AFFIDAVIT OF LOUIS BRAUN ON BEHALF OF PLAINTIFF —Filed Oct. 25, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Louis Braun, a resident of Biloxi, Mississippi, who being by me first duly sworn did depose and say:

That he is thirty-nine years old and for the past fifteen years has been familiarly associated with the shrimp and oyster business, having for ten years been connected with concerns packing shrimp and oysters and manufacturing their by-products.

That part of this time he was engaged in the manufacturing of shrimp at Lockport, Louisiana, and is thoroughly familiar with the conditions of the shrimp business in Louisiana as well as in Mississippi.

Affiant further states that during the entire time he was engaged in the packing business at Lockport, Louisiana, no effort was made by any one to use the shrimp hulls resulting from the canning of shrimp, and these hulls constituted a nuisance that was hard for him to remove.

That shrimp hulls in a raw state, while having some small fertilizer value, are also possessed of such a disagreeable odor, that when placed in a raw state in the field they are obnoxious to people residing for miles around, and that this condition exists during the entire period of their rotting, which is for several weeks.

[fol. 65] Affiant further states that he knows of no use that has been made of these shrimp hulls in Louisiana except in a few isolated instances and except for the small amount of hulls which are dried by one or two factory owners. However, the dried hulls are not used in Louisiana but are shipped out of Louisiana in interstate commerce and are used with other fertilizer in a mixture manufactured by a concern located near Biloxi, Mississippi.

Affiant further states that he is familiar with the shrimp region South of New Orleans and knows that while there is an abundant supply of shrimp that on account of climatic

conditions, no one can engage successfully in packing these shrimp for the reason that no communities have been able to be built giving a sufficient labor supply. The water supply is also unsatisfactory, and this, together with the mosquitoes and green heads, have forbidden any successful canning in this region, and unless the shrimp caught by the fishermen in this region are sold to Biloxi there will be no use of these shrimp and nothing will be yielded to the people of Louisiana because of their presence. That the only effect of the enforcement of the law will be that persons catching shrimp West of the Mississippi River will find a market for these shrimp cheapened by the absence of competition on the East side.

Affiant further states that if the competition of Mississippi canners is withdrawn from the Louisiana shrimp field, that it will leave a few companies monopolizing this output of food to such an extent that it will be felt in the increasing price of manufactured shrimp throughout the United States. Shrimp are being used extensively all over United States with approximately ninety five per cent of the Louisiana shrimp destined for foreign consumption from the time they are caught in the waters of the State of Louisiana.

[fol. 66] Affiant further states that by reason of his familiarity of the whole shrimp and oyster business, he knows that the present effect of an enforcement of the shrimp law against the Sea Food Company and against the Foster Fountain Company, Inc. would constitute a large loss and that their damage would be irreparable and without hope of recoupment.

Affiant further states that the general practice prevalent in the State of Louisiana with reference to shrimp hulls are that the same are destroyed or thrown away by the packers of shrimp at a loss and expense to these packers.

And further affiant sayeth not.

(Sgd.) Louis Braun.

Sworn to and subscribed before me, this the 24th day of October, A. D. 1927.

(Sgd.) Antonia Peresich, Notary Public. (Seal.)

[fol. 67] AFFIDAVITS OF TONY GUERRA, AND OTHERS, ON BEHALF OF PLAINTIFF—Filed October 25, 1927

(Map attached to original of this affidavit transmitted in the original, under order of Court)

[Title omitted]

Personally appeared before me, A. S. Gorenflo, a duly qualified and acting Notary Public in and for the City of Biloxi, Harrison County, Mississippi, the following persons, to-wit: Tony Guerra, Ben Robin, John Alphonse, Victor Molero, Henry Couture, Sebastian Gonzales, Marco Molero, Frank Russell, Manuel Molero, Sr., Willie Alonzo and Manuel Molero, Jr., who thereupon after being duly sworn by me to tell the truth did depose and say:

That each and every one of affiants is a resident of St. Bernard Parish, having lived in said parish during the entire life of each of affiants. That the respective ages of said affiants are as follows: Tony Guerra, twenty-six; Ben Robin, twenty-eight; John Alphonse, twenty-five; Victor Molero, twenty-nine; Henry Couture, sixty-one; Sebastian Gonzales, twenty-one; Marco Molero, sixty-two; Frank Russell, twenty-one; Manuel Molero, Sr., forty-two; Willie Alonzo, thirty-three; Manuel Molero, Jr., nineteen. That the occupation of each of said affiants is that of a trapper and fisherman and for years past each of affiants have been engaged in this business, trapping and fishing in the parishes of St. Bernard and Plaquamine, Louisiana, within that territory encircled with red ink on the map attached hereto and made a part of this affidavit.

That on account of the residence of affiants and because of their occupation they are familiar with all of the conditions existing in the said parishes of St. Bernard and Plaquamine with reference to the catching of oysters and shrimp, and are further familiar with the general climatic conditions in said parishes, as well as its effect upon occupations, industry and agriculture.

Affiants further state that these parishes consist of a small alluvial belt of land varying from one to ten miles in width on the east bank of the Mississippi River immediately below New Orleans, and then extending east for some thirty to fifty miles in a series of flats covered with

marsh grass and interspersed with bays and bayous, which latter described land is commonly known among fishermen [fol. 68] as the Louisiana Marsh. That during the past fifty or seventy-five years the chief agricultural endeavors of the inhabitants of these parishes has been the raising of cane, rice, vegetables and fruits but this occupation has been unprofitable and hazardous for two reasons; the first reason being that the Mississippi River when at its flood stage usually breaks its banks some where near New Orleans, or the banks of the river are broken for the protection of New Orleans and thereby the above described country becomes flooded with river water, in each instance ruining the crops of the inhabitants. The second reason is that, on account of the low altitude of the land with reference to sea level and on account of the prevalence along this coast of periodical tropical hurricanes the land is often times flooded about the time the crops are gathered with the waters of the Gulf of Mexico which waters are sent inland and over the flat land by the force of the wind driving it through the bays and bayous above described, and on to the land near the river banks, in this manner again destroying whatever crops were planted and ungathered.

Affiants further state that because of the above reasons and for the further reason that the nearness of the marsh assists in the breeding of mosquitoes and other insects that prove detrimental both to persons as well as to cattle, that a great many of the persons in said parishes, particularly in Plaquamine Parish, and in the lower regions of St. Bernard Parish, have been compelled to engage in the fishing of shrimp and oysters and in the catching of muskrats as a means of livelihood. That for years past, affiants have been engaged in this occupation, along with the majority of the residents of said parishes, and the method of their disposal of their catch has been as follows: the fishermen using either their own boats or small boats lent them or rented them by canning companies, would go out into the marsh and in the bays and bayous and catch shrimp, which on account of the perishable nature of the shrimp, had to be hastily disposed of, and these shrimp would then be brought to a freight boat owned by one of the various factories canning shrimp, and this freight boat, loaded with ice, after buying the shrimp would take the shrimp into

Biloxi, Mississippi, where the same may be canned in the various canneries at Biloxi. That for some reason unknown to affiants, but evidently caused by the climatic con- [fol. 69] ditions prevailing in the above parishes no cannery in the past has had a successful existence on the eastern banks of the Mississippi River or in the bays and bayous contigious thereto. That at the present time there exists only one such cannery and affiants are informed and believe that the same is now being rented or has recently been sold under a receivership proceedings. That on account of the non-existence of such cannery on the eastern banks of the Mississippi River or in the bayous lying nearby the fishermen living in the two parishes aforesaid had had almost completely to depend upon the market furnished by the packers of shrimp and oysters at Biloxi. That in Biloxi there is situated from fifteen to twenty canneries, each owned by independent concerns, and not only is a market furnished thereby, to affiants and other fishermen of St. Bernard and Plaquamine parishes, but that on account of the diverse interests owning said factories this market is a competitive market. That by reason of this market and by reason of the winter catch of muskrats the prosperity of the fishermen and inhabitants of the two parishes in the past has been soundly assured.

Affiants further state, however, that during the early part of the year 1927 it was necessary, in order to save the city of New Orleans from flood or from the dangers of a flood, that a crevasse be made in the central part of St. Bernard Parish at Caernavon, Louisiana. That one of the effects of this crevasse was an almost total destruction of this year's supply of muskrats. That thereby the fishermen and other inhabitants of this parish, their farms having been largely injured by the flood, were almost completely dependent upon the subsistence gained from shrimp and oysters. That when the shrimp season of 1927 opened, affiants were informed that the Louisiana Shrimp Act went into effect, preventing affiants from selling their catch to persons residents of Mississippi, or from themselves taking their catch of shrimp, in pursuance of agreements already made, to canneries in Mississippi. That due to this state of affairs the affiants had no market except such market as was afforded by one factory at Violet, Louisiana,

and thereby not only were they compelled to greatly curtail their catch of shrimp, but the chief result of this condition was that the price of shrimp immediately dropped from a [fol. 70] price of 1926 prevailing at $5.00 or $5.50 per barrel to a price of $4.50 per barrel, with no ready market for the catch at this price. That in addition, affiants were compelled to give a barrel of two hundred fifty pounds or thereabouts of shrimp per barrel as against a weighed barrel used by the packers in Mississippi of an even two hundred pounds. That not only did this condition exist, but in numbers of instances persons catching shrimp were unable to obtain any market for the same whatsoever and it was necessary that the result of their labor be by them reconsigned to the sea from which it was gathered.

That affiants further state that in addition to the above, that other arbitrary rules and requirements were made by the few purchasers of shrimp at Violet, Louisiana, and thereabouts, with the result that the earnings of affiants and other fishermen were decreased and their means of liv-lihood, which is in any case a hard one, was thereby greatly burdened.

Affiants would further state that if the validity of the Louisiana Shrimp Act is sustained and the competitive market from Biloxi is destroyed and made impossible, that its chief effect will be felt upon the fishermen of Southeast Louisiana in the form of a decreased earning capacity and a decreased opportunity of selling the abundant supply of shrimp prevailing in its waters and the enforcement of said act will tend to create a monopoly among a few persons in Louisiana in the buying, canning and selling of shrimp and oysters in that part of Louisiana.

Affiants further state that shrimp are a migratory fish coming into the waters of the State of Louisiana from places unknown to affiants. That the location of shrimp changes from day to day. On one day you may find the shrimp in the eastern part of the waters outlined herein, and on the next day the same shrimp may be fifteen or twenty miles distant therefrom. That not only is this true, but that in many years the supply of shrimp is inexhaustible, that their catch depends upon the ability of the packer to sell the shrimp and that in the opinion of affiants no public purpose of conservation can be served the people

of Louisiana by the enforcement of said law, nor will it assist in conserving the supply of shrimp in Louisiana, but, [fol. 71] unless present conditions change, will prove detrimental to those people in Louisiana who live in proximity to the supply of shrimp and oysters and who fish for them as a means of liv-lihood.

Affiants further state that the heads and hulls of the shrimp are of small, if any, value, and in most of the factories in Louisiana, to the personal knowledge of affiants, are thrown away by the factories and are a nuisance in the bayous and bays where they are thrown. That were any of affiants to-day to offer any quantity of these shrimp hulls and heads to any factory in their neighborhood the same would be refused as a gift and, there is positively no market value for these heads and hulls in that part of Louisiana known to affiants.

Affiants further state, upon information and belief, that had the restraining order secured from the United States Court by the Foster-Fountain Company, Inc., not been obtained that at this time not only would their ability to sell shrimp have been very greatly curtailed, but that the market price of shrimp of $6.00 per barrel now prevailing in Louisiana would have been as low as $4.00 per barrel for a much larger barrel.

Affiants further state that due to the flood hereinabove mentioned with its resultant destruction of property values that at the present time the conditions prevailing among the fishermen of said parishes is distressing and a great many of — persons who have been engaged in this business will be threatened with actual want during the coming winter, unless a free and complete market can be had for the fish and oysters caught by them and any destruction of this market would not only injure affiants and other fishermen engaged in this business, but would bring with it actual suffering and want to the families of many of the fishermen of these two parishes.

Affiants further state that in the knowledge of affiants gained in the fishing of shrimp, that no commercial shrimp in the state of Louisiana are caught in the outside waters of this state, that is outside of the territorial boundaries set out in the shrimp act herein mentioned.

Affiant, Victor Molero, especially makes affidavit herein that on one occasion, before the restraining order herein

[fol. 72] mentioned was obtained, that upon delivery of eighty barrels of shrimp to one of the factories in Louisiana he was compelled to take pay therefor at the rate of fifty-one barrels, and that this burden and hardship placed on him was due wholly to the fact that he had no outside market in which to sell said shrimp.

Affiants further state that they, being residents and citizens of the State of Louisiana, are entitled to catch shrimp in those waters and under the provisions of the shrimp act herein referred to are entitled to hold said shrimp as their property and to sell the same to any persons in the State of Louisiana, and that they have in times past sold shrimp to all of the factories in Biloxi, including Foster-Fountain Company, Inc., and at this time would be willing to sell any of their catch to any of said factories, including the Foster-Fountain Company, Inc., provided the market price therefor was paid by said Foster-Fountain Company, Inc.

Affiants further state that an affidavit containing the above facts could be obtained from hundreds of fishermen of St. Bernard and Plaquemine parishes.

Affiants further state that a specific instance of the effect of the law is that prior to the granting of the restraining order, there was no competitive market prevailing and none of affiants were able to make any profit whatsoever from their labor, but that immediately three days after the granting of said injunction, affiants were able to share a profit of $70.00 each.

Affiants further state that in St. Bernard Parish and in Plaquemine Parish that the labor conditions, by reason of the fact that there are no large communities, are such that shrimp and oysters cannot be packed to the best advantage, the reason for this being that while five or six fishermen might be able to catch fifty barrels of shrimp in a day that it would take several hundred women and children to pack this number of shrimp, and for the further reason that the water supply in the above parishes mitigates against the packing of wet shrimp and the large demands for shrimp is for shrimp packed in cans but suspended in water, whereas the water at Biloxi, being artesian water, enables the shrimp to be kept for a much longer time than shrimp packed in either river water or artesian water obtained

from the above parishes, one of the results of packing in [fol. 73] the latter water being that the shrimp very quickly become discolored and unsalable.

And further deponents sayeth not.

(Sgd.) Tony Guerra. (Sgd.) Ben (his X mark) Robin. Witness (Sgd.) Hazel L. Burke. (Sgd.) John Alphonse. (Sgd.) Victor Molero. (Sgd.) Henry Couture. (Sgd.) Sebastian (his X mark) Gonzales. Witness (Sgd.) W. L. Guice. (Sgd.) Marco Molero. (Sgd.) Frank Roussell. (Sgd.) Manual (his X mark) Molero, Sr. Witness (Sgd.) J. O. Whetstone. (Sgd.) Willie Alonzo. (Sgd.) Manuel Molero, Jr.

Sworn to and subscribed before me, this the 20th day of September, A. D., 1927.

(Sgd.) A. S. Gorenflo, Notary Public. (Seal.)

My commission expires 3-14-1930.

[fol. 74] AFFIDAVIT OF L. O. JOHNSON, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927.

[Title omitted]

Personally appeared before me A. S. Gorenflo, a Notary Public duly commissioned in and for the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Mississippi, and is engaged in the fish and oyster business at Biloxi, Mississippi, and has been so engaged for the last twelve years.

That at the present time he sells and ships oysters, shrimp and fish raw or in their natural state, and also packs and cans shrimp and oysters.

That affiant knows of his own knowledge that shrimp are shipped from the State of Louisiana to the State of Mississippi by citizens residents of Louisiana who are engaged in the business of selling raw shrimp and oysters, and is informed and believes that the Conservation Department of the State of Louisiana knows of such shipment be-

ing made and ignores the fact that this is a violation of the so called Louisiana Shrimp Act for the reason that an enforcement of said law would very seriously injure and help destroy the business of such raw oyster and shrimp merchants in New Orleans.

That this affiant knows that any one without the State of Louisiana may order and receive such shrimp in their natural state, affiant having not longer than ten days ago ordered a quantity of such shrimp, to-wit: twenty-five pounds each from two different merchants in Louisiana, and the same were delivered to the express company in New Orleans and by the express company delivered to affiant at Biloxi, Mississippi.

[fol. 75] That there is no difference in the natural state of these shrimp from the same shrimp caught in the waters of the State of Louisiana and by a fishermen who catches shrimp sold to the factories in Biloxi, Mississippi, who in Biloxi, Mississippi, clean or pick the shrimp and can the same for shipment in interstate commerce.

Affiant further states that, in his opinion, that shrimp hulls have little, if any value for fertilizer purposes, and knows that at the present time that by far a majority of such hulls are thrown overboard after being cleaned from the shrimp and no attempt is made either in Louisiana or in Mississippi to conserve same for any purpose.

And further deponent sayeth not.

(Sgd.) L. O. Johnson.

Sworn to and subscribed before me, this the 23 day of September, A. D. 1927.

(Sgd.) A. S. Gorenflo, Notary Public. (Seal.)

My commission expires 3-14-1930.

[fol. 76] AFFIDAVIT OF R. HART CHINN, ON BEHALF OF PLAINTIFF—Filed Nov. 7, 1927.

[Title omitted.]

Personally came before me, the undersigned officer, R. Hart Chinn, President of the Foster-Fountain Co., Inc., one of the complainants in the above entitled cause, who,

by me being duly sworn, makes oath that he is the President of the Foster-Fountain Co., Inc., a Louisiana corporation, one of the complainants in the above entitled cause:

That said company did operate a hulling plant on the Louisiana coast, but does not operate a canning plant or drying factory in the State of Louisiana; that the Conservation Department of the State of Louisiana refused to grant said company boat licenses to catch shrimp in the waters of the State of Louisiana unless said Company also took out license to operate a drying platform or a cannery, and, in order to secure the right to obtain boat licenses for catching shrimp in said waters, as it was entitled to do, and for no other purpose, said company took out licenses to operate a cannery in the State of Louisiana. Affiant states that it was never, as set forth in several affidavits on file in this case, represented before the Legislature of the State of Louisiana, 1925, by John Kennedy and Mr. O'Keefe or any other attorneys. The affiant appeared before the Legislature of the State of Louisiana on behalf of the said corporation individually himself and, in opposition to the bill in question, addressed committees of the said Legislature of the State of Louisiana; that he had nothing, however, to do with the preparation of the bill passed; that he was opposed to the bill as originally offered and used all honorable means to defeat the same; that when it became perfectly apparent, however, that the bill would be passed, he did agree that he would cease further active opposition to the bill before the Legislature of the State of Louisiana, upon the insertion of the amendment postponing the operation of the Act for one year; but affiant, at no time, for the company represented by him, agreed expressly or by implication that he would move his plant to the State of Louisiana or would erect one in the State of Louisiana. When it became apparent that, in spite of his objections, as well as the objections of other persons, the [fol. 77] bill would be passed, affiant, as he had the right to do, acquiesced in the amendment postponing the effective date of the Act for one year; but affiant never agreed, at any time, expressly or by implication, to accept the bill in its finality or to be bound by its provisions, and in no way waived his right as a citizen of the United States to contest the measure as a valid piece of legislation; nor is he estopped in any manner to secure a judicial determination

as to the validity of the bill or any other of the sections thereof.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me, this 2d day of November, 1927.

(Sgd.) Antonio Peresiet, Notary Public.

Copy.

Copy served on M. M. Irwin, Assistant Attorney General, who agreed verbally to the filing of the afidavit and the consideration thereof by the court.

[fol. 78] AFFIDAVIT OF W. L. GUICE, ON BEHALF OF PLAINTIFF—Filed Oct. 27, 1927.

[Title omitted.]

Before me the undersigned Clerk of the above Court personally appeared W. L. Guice, who being duly sworn by me did depose and say:

That he is well acquainted with the subject of the controversy herein, and knows that the amount of said controversy exceeds the sum of three thousand dollars, as is fully set out in the bill of Complaint herein on file.

And further deponeth sayeth noth.

(Sgd.) W. L. Guice.

Sworn to and subscribed before me this day, the 27th of October, 1927.

(Sgd.) N. H. Lewis, Deputy Clerk, U. S. District Court, Eastern District of La.

[fol. 79] AFFIDAVIT OF R. HART CHINN, ON BEHALF OF PLAINTIFF—Filed Oct. 27, 1927.

[Title omitted.]

Personally came before me the undersigned officer, R. Hart Chinn, President of the Foster-Fountain Co., Inc., one of the complainants in the above entitled cause, who

by me being duly sworn makes oath that he is the President of the Foster-Fountain Co., Inc., a Louisiana Corporation, one of the complainants in the above entitled cause:

That said Company does not operate a canning plant, or drying factory in the State of Louisiana; that the Conservation Department of the State of Louisiana refused to grant said Company a boat license to catch shrimp in the waters of the State of Louisiana unless said Company also took out a license to operate a drying platform or a cannery, and in order to secure the right to obtain boat licenses for catching shrimp in said waters and for no other purpose, said Company, as it was entitled to do, took out licenses to operate a cannery in the State of Louisiana though it has never operated such a cannery in the State of Louisiana. Affiant states that it has entered, as set forth, in several affidavits on file in this case that the Foster-Fountain Co., Inc., was ever represented before the Legislature of the State of Louisiana at the sessions referred to by John Kennedy and Mr. O'Keefe or any other attorneys. That affiant appeared before the Legislature of the State of Louisiana on behalf of the said Corporation individually himself and in opposition to the bill in question, addressed committees of the said Legislature of the State of Louisiana; that he had nothing, however, to do with the preparation of the bill passed; that he was opposed to the bill as originally offered and used all honorable means to defeat the same; that when it became perfectly apparent, however, that the bill would be passed, he did agree that he would cease further active opposition to the bill before the Legislature of [fol. 80] the State of Louisiana, upon the insertion of the amendment postponing the operation of the Act for one year, but affiant, at no time, on his behalf, or for the Company, represented by him, agreed expressly or by implication that he would move his plant to the State of Louisiana or would erect one in the State of Louisiana. When it became apparent that, in spite of his objections as well as the objections of other persons, that the bill would be passed, affiant, as he had the right to do, acquiesced in the amendment postponing the effective date of the Act for one year, but affiant never agreed, at any time, expressly or by implication, to accept the bill in its finality or to be bound by its provisions, in no way waive his right as a citizen of the

United States to contest the measure as a valid piece of Legislation nor is he estopped in any manner to secure a judicial determination as to the validity of the bill or any of the sections thereof.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me this 27th day of October, 1927.

(Sgd.) N. H. Lewis, Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

[fol. 81] AFFIDAVIT OF L. O. JOHNSON, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public duly commissioned and qualified under the laws of the State of Mississippi to act in the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, who, after the said L. O. Johnson had been by me duly sworn, did depose as follows, to-wit:

That he, the said affiant, is a resident of Biloxi, Mississippi, and has resided in said city and state for the last thirty years;

That the affiant is thirty-five years old and for the past twenty years has been intimately acquainted with the shrimp and oyster packing and canning business in the City of Biloxi, Mississippi, for the last twelve years having been the director and manager of Johnson Fish & Oyster Company, one of the largest packing houses on the Mississippi Gulf Coast; that as such manager and director it has been his duty to investigate the shrimp industry beginning with the catching of said shrimp and their havits, etc. and ending with the packing and selling of said shrimp; that in gaining this information he has made personal inspections of the fishing grounds, has talked to hundreds of men engaged in the fishing business and has observed the operation nearly every plant packing shrimp in the state of Mississippi and on the eastern banks of the Mississippi River [fol. 82] in the State of Louisiana;

That affiant is acquainted with the bays, sounds and inlets in Louisiana where shrimp are caught and with the habits, customs and business methods of the native shrimpers in Louisiana who catch said shrimp, as well as of the Mississippi shrimpers who engage in a like business.

Therefore, from the above information in possession of affiant, affiant does further depose and say: that the shrimp industry originating in the Southern States about fifty or sixty years ago has grown to be a business where at least forty or fifty plants or packing houses are engaged in the packing of shrimp in the southern states; that with the exception of the Coast of Chile, most of the shrimp used commercially, both in the United States and Europe, are packed in the southern states and the development of the shrimp industry has largely centered in and around methods learned, adopted and used in the City of Biloxi and State of Mississippi; that from this city has gone outposts to other parts of the southern states resulting in a development of the shrimp industry at other points, but from time immemorial Biloxi has been known as the natural home of those persons who were most skilled in the catching, packing and canning of shrimp and oysters and most intimate with the details of the business; that the shrimp itself is a migratory shell fish that dwells in some quantities in all parts of the world but is peculiarly indigenous to the Gulf of Mexico; it being found in all the waters of the Gulf of Mexico, even miles away from the mainland or shore; that although native shrimpers have studied the presence of these shrimp for the past fifty years there has arisen no definite theory as to the place where they spawn or the conditions of their incubation and no physical reason can be given for their presence in one part of the Gulf as against their lack of presence in another of the Gulf, but for some reason unknown to man after the shrimp reach a commercial size they find the waters of the State of Louisiana in that part of the state called the Louisiana [fol. 83] Marsh best adapted to their adult existence and for this reason in the early fall these shrimp can be found in the waters of the Louisiana marsh in greater quantities than anywhere else in the Mexican Gulf Coast. This marsh, comprising the parishes of St. Bernard and Plaquemine, extends for miles east from the Mississippi River and away from the small strip of alluvion highland that constitutes

the farming section of the above parishes. In normal tide the marsh is a flat uncovered by water, but in extraordinary high tide the entire marsh except the grass is covered with water, and during the hurricane tide the waters of the Gulf sweep inland almost to the banks of the Mississippi River, the marsh being scattered throughout its entire length is a natural breeding place for what is called the salt water mosquito and another very vicious insect locally known as a green-head. The presence of these two insects make it impossible for any human to dwell in this marsh unless he be so native to the soil and so acclimated to the action of these insects that he can suffer and stand a continuous attack of these insects, which is sufficient to drive the ordinary man momentarily insane. For this reason no towns or hamlets have sprung up in the two parishes that, in the opinion of affiant, are large enough to give the excess of female and adult labor necessary to operate successfully a shrimp and oyster canning plant, these plants requiring at certain stated seasons a very large number of operators; however, the work is so irregular and the labor turn-over so heavy that it would be impossible to secure this labor, unless it was the labor in excess of the natural requirements of the ordinary town that could at a moment's notice, be secured when wanted. The labor, although that of children, women and elderly men, is highly skilled and must come from years of association with the picking of shrimp. The ordinary woman unacquainted with the picking of shrimp, being unable to pick or shell even as much as one-fifth of that of skilled persons and as these laborers work piece work it [fol. 84] is unable to hold them unless they are skilled enough to earn a reasonable pay.

That affiant further says, that for years past it has been the habit and custom of Biloxi fishermen to go to the Louisiana Marsh and there catch fish and shrimp in small boats, which shrimp were in turn sold to a freight boat belonging to a factory operator either of Louisiana or Mississippi; likewise a large number of hardy fishermen living in the parishes above mentioned would catch shrimp in small boats and sell these shrimp either to the Biloxi boats or the representatives of the few Louisiana factories. The ability to carry these shrimp to Biloxi resulted in a keen competition among the various factory owners for their purchase of these shrimp and kept the price of shrimp high enough

to pay both natives and non-residents a reasonable wage for their daily arduous task. That this was the result of competition is shown by the fact that last year the average price of shrimp in Louisiana was $9.00 per barrel, whereas in the state of Alabama, where no such competition was allowed, the fishermen received $5.00 or $6.00 per barrel for identical shrimp. These shrimp, after being caught, were then transported to Biloxi and packed in Biloxi, Biloxi being about forty or fifty miles distant from the marsh across a body of quiet water, and also being located on a high, sandy shore with an abundance of very finest of water and with a climate that is noted throughout the United States for its healthfulness. The living conditions being so exceilent, as well as the other attractions such as schools, etc., brought to Biloxi large numbers of persons who were willing to work at one business a part of the time and during the rush season to assist in the packing of shrimp, thereby producing at all times an abundance of labor without which the average shrimp factory cannot be successful. These shrimp, [fol. 85] after being brought to Biloxi and canned, are shipped to all parts of the United States, some of the shrimp being shipped to various countries of Europe, and practically all of the shrimp, regardless of same being packed in Biloxi or in Louisiana, become the object of a widely scattered interstate commerce, every state in the Union and nearly every foreign land drawing on this supply for a part of the shrimp used by it.

Affiant further states, that while during the last past few years a number of factories have successfully operated, canning shrimp on the western banks of the Mississippi River, that for the past twenty-five years there has been no successful operation of canning plants on the eastern bank of the Mississippi River. During that period of time numerous persons, both from Louisiana and from Biloxi, have attempted to operate these plants but due to the inability to secure proper labor, the natural viciousness of the climate, the poor water conditions, none of these plants have continued under a long successful management by any one person, and while some of the plants are in existence now that have operated for years past they have operated through a series of managements and mishaps going from one hand to another and affiant knows of no plant, except

that of the Caernovan Packing Company that has had a continued successful existence and this plant was wiped out during the present summer by reason of the fact that the State of Louisiana used that part of St. Bernard Parish as a spillway for the Mississippi River, a large part of another, Plaquamine Parish, being a permanent spillway for the Mississippi River, so that during flood times the waters of the Mississippi flow almost continuously over a part of these parishes and at this time affiant is informed that a plan is being formed in New Orleans for continuing the above spillway where the packing plant is located,

That in affiant's opinion, it would not be possible to successfully can and pack shrimp in that part of Louisiana [fol. 86] known to himself and his business associates and any effort made to comply with the present Louisiana shrimp law would, in the opinion of affiant, largely injure and destroy his business in Biloxi, Mississippi, and result in not only an unsatisfactory operation in Louisiana, but in compelling affiant and his associates to live under conditions which would be largely injurious and destructive to their health and future happiness.

That Foster-Fountain Company, Inc. plant and its equipment is worth at least $125,000.00 and that the plant and equipment of the Sea Food Company, in the opinion of affiant, is worth $150,000.00. That the effect of the continued operation of the Louisiana shrimp law would be largely to destroy the value of the above plants and equipment and its present immediate effect would be to prevent affiant Foster Fountain Company, Inc., and the Sea Food Company and others from carrying out the contract referred to in the bill of complaint and other contracts and from being able to successfully conduct their interstate business so as to satisfy the demands and requirements of customers in all parts of the United States who have ordered shrimp from both affiant and the Sea Food Company. That its further effect would be to destroy or injure the means of livelihood of at least three or four thousand people in the city of Biloxi, comprising some eight hundred families, virtually compelling these people to sacrifice their homes in Biloxi, Mississippi, at a loss and to move themselves and families to a state and to a locality where the social and health conditions in no wise can compare to that of

Biloxi. That those people's lives have been lived right around packing houses and packing plants and that they know no other way in which to make a living. That there are no local industries in Biloxi that could accommodate them in the future were the packing plants removed or injured, and the second effect of the Louisiana law and its enforcement would be to tear these people from their native soil and require them to commence an adventurous existence in the marshes of the state of Louisiana that would [fol. 87] injure their children both physically and morally and destroy their home ties that have been created over a period of years.

Affiant further states that, in his opinion, and in the opinion of other men who have spent a lifetime in this business, no*t* object of conservation is intended by the shrimp law herein referred to as these shrimp, being migratory, come each year in renewed quantities to the Louisiana Marsh, and there is no provision in the act complained of that in anywise assists the State of Louisiana in augmenting the amount of shrimp within its borders, nor is there any necessity for these shrimp as a food for the people of the State of Louisiana as more than ninety-five per cent of all shrimp caught in the State of Louisiana are either packed and canned and shipped out of the State, or shipped out of the State in the raw state.

That affiant is informed and believes that the conservation officials of the State of Louisiana recognize this fact and agree to this condition by allowing certain persons in Louisiana to ship from the State by express shrimp with the hulls on after said shrimp have had their heads removed, this being what is called the raw shrimp business.

Affiant further says that the amount of the hulls produced for fertilizer is negligible; that while some thirty or forty per cent of the hulls are dried and made into shrimp bran in the State of Louisiana that this bran is immediately shipped from the State in interstate commerce and used by fertilizer companies in other states, but as a matter of fact the entire shrimp bran business is a negligible part of the shrimp industry, in the whole of the United States the yearly output being valued at less than one per cent of the shrimp output, but affiant further states that as a general rule the shrimp hulls and heads serve no useful purpose

but are thrown into the bayous and bays of the State of Louisiana to be then destroyed by crabs and other fish.

And further deponent sayeth not.

L. O. Johnson.

Sworn to and subscribed before me, this the 23 day of September, A. D. 1927.

A. S. Greyes,
Notary Public.

My commission expires 3-14-1930.

[fol. 88] Affidavit of Ernest Desporte, Jr., on Behalf of Plaintiff—Filed October 26, 1927.

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public duly commissioned and qualified under the laws of the State of Mississippi to act in the City of Biloxi, Harrison County, Mississippi, Ernest Desporte, who, after the said Ernest Desporte had been by me duly sworn, did depose as follows, to-wit:

That he, the said affiant, is a resident of Biloxi, Mississippi, and has resided in said city and State for the last thirty-nine years:

That the affiant is thirty-nine years old and for the past twenty years has been intimately acquainted with the shrimp and oyster packing and canning business in the city of Biloxi, Mississippi, for the last ten years having been the director and manager of Desporte Packing Company, one of the largest packing houses on the Mississippi Gulf Coast; that as such manager and director it has been his duty to investigate the shrimp industry beginning with the catching of said shrimp and their habits, etc. and ending with the packing and selling of said shrimp; that in gaining this information he had made personal inspections of the fishing grounds, has talked to hundreds of men engaged in the fishing business and has observed the operation of nearly every plant packing shrimp in the State of Mississippi and on the eastern banks of the Mississippi River in the State of Louisiana;

[fol. 89] That affiant is acquainted with the bays, sounds and inlets in Louisiana where shrimp are caught and with the habits, customs and business methods of the native shrimpers in Louisiana who catch said shrimp, as well as of the Mississippi shrimpers who engage in a like business.

Therefore, from the above information in possession of affiant, affiant does further depose and say: that the shrimp industry originating in the Southern States about fifty or sixty years ago has grown to be a business where at least forty or fifty plants or packing houses are engaged in the packing of shrimp in the Southern States; that with the exception of the Coast of Chile, most of the shrimp used commercially, both in the United States and Europe, are packed in the Southern States and the development of the shrimp industry has largely centered in and around methods learned, adopted and used in the City of Biloxi and State of Mississippi; that from this city has gone out outposts to other parts of the Southern States resulting in a development of the shrimp industry at other points, but from time immemorial Biloxi has been known as the natural home of those persons who were most skilled in the catching, packing and canning of shrimp and oysters and most intimate with the details of the business; that the shrimp itself is a migratory shell fish that dwells in some quantities in all parts of the world but is peculiarly indigenous to the Gulf of Mexico, it being found in all the waters of the Gulf of Mexico, even miles away from the mainland or shore; that although native shrimpers have studied the presence of these shrimp for the past fifty years there has arisen no definite theory as to the place where they spawn or the conditions of their incubation as no physical reason can be given for their presence in one part of the Gulf as against their lack of presence in another of the Gulf, but for some reason unknown to man after the shrimp reach a commercial size they find the waters of the State of Louisiana in that part of the State called the Louisiana Marsh best [fol. 90] adapted to their adult existence and for this reason in the early fall these shrimp can be found in the waters of the Louisiana marsh in greater quantities than any where else in the Mexican Gulf Coast. This marsh, comprising the parishes of St. Bernard and Plaquamine, extends for miles east from the Mississippi River and

away from the small strip of alluvian highland that constitutes the farming section of the above parishes. In normal tide the marsh is a flat uncovered by water, but in extraordinary high tide the entire marsh except the grass is covered with water, and during hurricane tide the waters of the Gulf sweep inland almost to the banks of the Mississippi River; the marsh being scattered throughout its entire length is a natural breeding place of what is called the salt water mosquito and another very vicious insect locally known as a green-head. The presence of these two insects make it impossible for any human to dwell in this marsh unless he be so native to the soil and so acclimated to the action of these insects that he can suffer and stand a continuous attack of these insects, which is sufficient to drive the ordinary man momentarily insane. For this reason no towns or hamlets have sprung up in the two parishes that, in the opinion of affiant, are large enough to give the excess of female and adult labor necessary to operate successfully a shrimp and oyster canning plant, these plants requiring at certain stated seasons a very large number of operators; however, the work is so irregular and the labor turn-over so heavy that it would be impossible to secure this labor, unless it was the labor in excess of the natural requirements of the ordinary town that could, at a moment's notice, be secured when wanted. The labor, although that of children, women and elderly men, is highly skilled and must come from years of association with the picking of shrimp, the ordinary woman, unacquainted with the picking of shrimp, being unable to pick or shell even as much as one-fifth of that of skilled persons and as [fol. 91] these laborers work piece work it is unable to hold them unless they are skilled enough to earn a reasonable pay.

That affiant further says, that for years past it has been the habit and custom of Biloxi fishermen to go to the Louisiana Marsh and there catch fish and shrimp in small boats, which shrimp were in turn sold to a freight boat belonging to a factory operator either of Louisiana or Mississippi; likewise a large number of hardy fishermen living in the parishes above mentioned would catch shrimp in small boats and sell these shrimp either to the Biloxi boats or the representative of the few Louisiana factories. The

ability to carry these shrimp to Biloxi resulted in a keen competition among the various factory owners for their purchase of these shrimp and kept the price of shrimp high enough to pay both natives and non-residents a reasonable wage for their daily arduous task. That this was the result of competition is shown by the fact that last year the average price of shrimp in Louisiana was $9.00 per barrel, whereas in the state of Alabama, where no such competition was allowed, the fisherman received $5.00 or $6.00 per barrel for identical shrimp. These shrimp, after being caught, were then transported to Biloxi and packed in Biloxi, Biloxi being about forty or fifty miles distant from the marsh across a body of quiet water, and also being located on a high, sandy shore with an abundance of very finest of water and with a climate that is noted throughout the United States for its healthfulness. The living conditions being so excellent, as well as the other attractions such as schools, etc., brought to Biloxi large numbers of persons who were willing to work at one business a part of the time and during the rush season to assist in the packing of shrimp, thereby producing at all times an abundance of labor without which the average shrimp factory cannot be successful. These shrimp, after being [fol. 92] brought to Biloxi and canned, are shipped to all parts of the United States, some of the shrimp being shipped to various countries of Europe, and practically all of the shrimp, regardless of same being packed in Biloxi or in Louisiana, become the object of a widely scattered interstate commerce, every State in the Union and nearly every foreign land drawing on this supply for a part of the shrimp used by it.

Affiant further states, that while during the last past few years a number of factories have successfully operated, canning shrimp on the western banks of the Mississippi River, that for the past twenty-five years there has been no successful operation of canning plants on the eastern bank of the Mississippi River. During that period of time numerous persons, both from Louisiana and from Biloxi, have attempted to operate these plants but due to the inability to secure proper labor, the natural viciousness of the climate, the poor water conditions, none of these plants have continued under a long successful management by any

one person, and while some of the plants are in existence now that have operation for years past they have operated through a series of managements and mishaps going from one hand to another and affiant knows of no plant, except that of Caernovan Packing Company that has had a continued successful existence and this plant was wiped out during the present summer by reason of the fact that the State of Louisiana used that part of St. Bernard Parish as a spillway for the Mississippi River, a large part of another, Plaquamine Parish, being a permanent spillway for the Mississippi River, so that during flood times the waters of the Mississippi Flow almost continuously over a part of these parishes and at this time affiant is informed that a plan is being formed in New Orleans for continuing the above spillway where the packing plant is located.

That in affiant's opinion, it would not be possible to successfully can and pack shrimp in that part of Louisiana known to himself and his business associates and any effort [fol. 93] made to comply with the present Louisiana shrimp law would, in the opinion of affiant, largely injure and destroy his business in Biloxi, Mississippi, and result in not only an unsatisfactory operation in Louisiana, but in compelling affiant and his associates to live under conditions which would be largely injurious and destructive to their health and future happiness.

That Foster Fountain Company, Inc. plant and its equipment is worth at least $125,000.00 and that the plant and equipment of the Sea Food Company in the opinion of affiant, is worth $150,000.00. That the effect of the continued operation of the Louisiana shrimp law would be largely to destroy the value of the above plants and equipment and its present immediate effect would be to prevent affiant Foster Fountain Company, Inc. and the Sea Food Company and others from carrying out the agreement referred to in the bill of complaint and other contracts and from being able to successfully conduct their interstate business so as to satisfy the demands and requirements of customers in all parts of the United States who have ordered shrimp from both affiant and the Sea Food Company. That its further effect would be to destroy or injure the means of livelihood of at least three or four thou-

sand people in the city of Biloxi, comprising some eight hundred families, virtually compelling these people to sacrifice their homes in Biloxi, Mississippi, at a loss and to move with themselves and families to a state and to a locality where the social and health conditions in no wise can compare to that of Biloxi. That these people's lives have been lived right around packing houses and packing plants and that they know no other way in which to make a living. That there are no local industries in Biloxi that could accommodate them in the future were the packing plants removed or injured, and the second effect of the Louisiana law and its enforcement would be to tear these people from their native soil and require them to commence an adventurous existence in the marshes of the state of Louisiana that would injure their children both physically [fol. 94] and morally and destroy their home ties that have been created over a period of years.

Affiant further states that, in his opinion, and in the opinion of other men who have spent a lifetime in this business, not object of conservation is intended by the shrimp law herein referred to as these shrimp, being migratory, come each year in renewed quantities to the Louisiana Marsh, and there is no provision in the act complained of that in anywise assists the state of Louisiana in augmenting the amount of shrimp within its borders, nor is there any necessity for these shrimp as a food for the people of the state of Louisiana as more than ninety-five per cent of all shrimp caught in the state of Louisiana are either packed and canned and shipped out of the state, or shipped out of the state in the raw state.

That affiant is informed and believes that the conservation officials of the State of Louisiana recognize this fact and agree to this condition by allowing certain persons in Louisiana to ship from the state by express shrimp with the hulls on after said shrimp have had their heads removed, this being what is called the raw shrimp business.

Affiant further says that the amount of the hulls produced for fertilizer is negligible; that while some thirty or forty per cent of the hulls are dried and made into shrimp bran in the state of Louisiana that this bran is immediately shipped from the state in interstate commerce and used by fertilizer companies in other states, but as a matter of

fact the entire shrimp bran business is a negligible part of the shrimp industry, in the whole of the United States the yearly output being valued at less than one per cent of the shrimp output, but affiant further states that as a general rule the shrimp hulls and heads serve no useful purpose but are thrown into the bayous and bays of the state of Louisiana to be then destroyed by crabs and other fish.

And further deponent sayeth not.

(Sig.) Ernest Desporte, Jr.

Sworn to and subscribed before me, this the 26 day of September, A. D. 1927.

(Sig.) A. S. Merero, Notary Public. (Seal.)

[fol. 95] AFFIDAVIT OF O. G. SWETMAN, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, O. G. Swetman, who being by me first duly sworn did depose and say:

That he is Cashier of the Peoples Bank of Biloxi, Mississippi, and as an employee of said bank has for the past twenty years had an intimate acquaintance with the shrimp and oyster business in the State of Mississippi and the State of Louisiana, said bank having for a large number of years handled business transactions with the largest concerns doing business in both places.

That by reason of these business dealings he has studied this industry and is fully familiar with its financial and economical side.

Affiant further states that there is invested in this business in the City of Biloxi directly approximately a million and a quarter dollars, and indirectly several millions of dollars.

That there is situated in Biloxi about sixteen factories packing shrimp and oysters, employing during the season between four and five thousand people, and living off of the

earnings of the shrimp industry are approximately seven or eight thousand people.

Affiant further states that at the opening of the 1927 shrimp season all of these factories were shut down, re- [fol. 96] sulting in the loss of employment to thousands of people, many of whom were women and children without other means of support or employment.

That this condition was caused by the presence in the waters of the State of Louisiana of the enforcement officers of the Conservation Department of Louisiana, who were threatening to arrest any fishermen who violated the Louisiana shrimp act and confiscating the valuable boats engaged in this business.

That immediately upon the granting of the injunction in the above case, this condition was remedied by means of said injunction, thousands of people have been able to make a living and hundreds of cases of dire distress and want both in the eastern part of Louisiana and the western part of Mississippi have been prevented.

That the shrimp and oyster business is a very competitive one and almost the entire profit goes to the catchers of this article of commerce, and for this reason there has been numerous attempts made to monopolize the business and in the opinion of the affiant the sole purpose of the so-called Louisiana shrimp act was a desire on the part of a few canners of shrimp who have plants in both Louisiana and Mississippi to prevent the entrance into Louisiana of competition in the purchase of these shrimp.

That no other purpose could be served by the said act as the supply of shrimp in Louisiana is greater than the possible demand and the head and hulls are of very small value as shown by this case.

That the only man who now uses these hulls in manufacturing fertilizer shut down a plant in Biloxi where an unlimited amount of hulls could have been obtained, and changed from manufacturing fertilizer from shrimp hulls to manufacturing the same from other substances, mixed with a small part of shrimp hulls.

Affiant further states that if said law was continued in force that it would create a monopoly in favor of those [fol. 97] engaged in packing shrimp west of the Mississippi River, to such an extent that the price of shrimp could

be increased in all parts of the United States, as the chief competition to the packers in the above territory comes from shrimp packers on the coast of Mississippi.

Affiant further states that the coast of Mississippi is peculiarly adapted to the canning of shrimp on account of its clear pure water, but that it is not practical to manufacture shrimp west of the Mississippi River in the State of Louisiana, for the reason that there is a greater lack of community life and the absence of pure water needed in the manufacture of these shrimp to make the same of high market value.

Affiant further states on information and belief that there is an increasing demand for what is known as raw shrimp, that is, shrimp packed in ice and shipped to various parts of the United States to be used by hotels and restaurants in their raw state.

That a great many of the persons engaged in this business are citizens of Louisiana as well as citizens of Mississippi, and this industry cannot be carried on unless the Louisiana shrimp law is either disobeyed or held invalid, and affiant is informed and believes that the industry is now being carried on in Louisiana in increasing size.

And further affiant sayeth not.

(Sig.) O. G. Swetman.

Sworn to and subscribed before me, this the 21st day of October, A. D. 1927.

(Sig.) Antonio Perisich, Notary Public. (Seal.)

[fol. 98] AFFIDAVIT OF C. B. FOSTER ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927.

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, C. B. Foster who being by me first duly sworn did depose and say:

That he is President of the C. B. Foster Packing Company, a corporation domiciled at Biloxi, Mississippi, and engaged in packing shrimp and oysters.

That said corporation also has a plant on the West Bank of the Mississippi River engaged in packing shrimp.

That on account of the odors and other obnoxious features of shrimp heads and hulls, affiant has been hindered in the packing of said shrimp. In disposing of said shrimp heads and hulls that he has tried to sell said shrimp heads and hulls in the open market in Louisiana but found no purchaser therefor, and knowing that one large plant in Louisiana had a grinding machine or drier offered to give his shrimp heads and hulls to the plant if said plaint would remove said heads and hulls, but this offer was refused, and at the present time at a loss and expense, affiant is compelled to haul said shrimp hulls away from his plant on a barge and dump them into some of the bayous of Louisiana.

Affiant further states upon information and belief that there are only six shrimp hull dryers in Louisiana, one at Wistmego one at Lopitte, one at Green Meadow, one at Violet, and one at Harvey and one at Homer, and that the shrimp hulls and heads after being dried are almost entirely shipped in the raw state from the State of Louisiana to [fol. 99] other states, principally to Biloxi, Mississippi.

And further affiant sayeth not.

(Sig.) C. B. Foster.

Sworn to and subscribed before me, this 22nd day of October, A. D. 1927.

(Sig.) Eugene Peresich, Notary Public. (Seal.)

[fol. 100] AFFIDAVIT OF VICTOR ELLIS ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Victor Ellis who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that with the exception of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer, and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to conserve the shrimp heads and hulls.

[fol. 101] And further affiant sayeth not.

(Sig.) Victor Ellis.

Sworn to and subscribed before me, this 22nd day of October, A. D. 1927.

(Sig.) Eugene Pereisich, Notary Public. (Seal.)

[fol. 102] AFFIDAVIT OF R. HART CHINN ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public duly commissioned and qualified under the laws of the State of Mississippi to act in the City of Biloxi, Harrison County, Mississippi, R. Hart Chinn, who after the said R. Hart Chinn had been by me duly sworn, did depose as follows, to-wit:

That he, the said affiant, is a resident of Biloxi, Mississippi, and has resided in said city and state for the last thirty years;

That the affiant is thirty-nine years old and for the past twenty years has been intimately acquainted with the shrimp and oyster packing and canning business in the City of Biloxi, Mississippi, for the last seven years having been the director and manager of Foster Fountain Company, Inc., one of the largest packing houses on the Mississippi Gulf Coast; that as such manager and director it has been his duty to investigate the shrimp industry beginning with the catching of said shrimp and their havits, etc. and ending with the packing and selling of said shrimp; that in gaining this information he has made personal inspections of the fishing grounds, has talked to hundreds of men engaged in the fishing business and has observed the operation of nearly every plant packing shrimp in the state of Mississippi and on the eastern banks of the Mississippi River in the State of Louisiana;

[fol. 103] That affiant is acquainted with the bays, sounds and inlets in Louisiana where shrimp are caught and with the habits, customs and business methods of the native shrimpers in Louisiana who catch said shrimp, as well as of the Mississippi shrimpers who engage in a like business.

Therefore, from the above information in posession of affiant, affiant does further depose and say: that the shrimp industry originating in the Southern States about fifty or sixty years ago has grown to be a business where at least forty or fifty plants or packing houses are engaged in the packing of shrimp in the southern states; that with the exception of the Coast of Chile, most of the shrimp used commercially, both in the United States and Europe, are packed in the southern states and the development of the shrimp industry has largely centered in and around methods learned, adopted and used in the City of Biloxi and State of Mississippi; that from this city has gone out outposts to other parts of the southern states resulting in a development of the shrimp industry at other ports, but from time immemorial Biloxi has been known as the natural home of those persons who were most skilled in the catching, packing and canning of shrimp and oysters and most intimate with the details of the business; that the shrimp itself is a migratory shell fish that dwells in some quantities in all parts of the world but is peculiarly indigenous to the Gulf of Mexico; it being found in all the waters of the Gulf of Mexico, even miles away from the

mainland or shore; that although native shrimpers have studied the presence of these shrimp for the past fifty years there has arisen no definite theory as to the place where they spawn or the conditions of their incubation and no physical reason can be given for their presence in one part of the Gulf as against their lack of presence in another — of the Gulf, but for some reason unknown to man after the shrimp reach a commercial size they find the waters of the State of Louisiana in that part of the state called the Louisi- [fol. 104] ana Marsh best adapted to their adult existence and for this reason in the early fall these shrimp can be found in the waters of the Louisiana marsh in greater quantities than anywhere else in the Mexican Gulf Coast. This marsh, comprising the parishes of St. Bernard and Plaquemine, extends for miles east from the Mississippi River and away from the small strip of alluvion highland that constitutes the farming section of the above parishes. In normal tide the marsh is a flat uncovered by water, but in extraordinary high tide the entire marsh except the grass is covered with water, and during hurricane tide the waters of the Gulf sweep inland almost to the bank*ds* of the Mississippi River, the marsh being scattered throughout its entire length is a natural breeding place of what is called the salt water mosquito and another very vicious insect locally known as a green-head. The presence of these two insects make- it impossible for any human to dwell in this marsh unless he be so native to the soil and so acclimated to the action of these insects that he can suffer and stand a continuous attack of these insects, which is sufficient to drive the ordinary man momentarily insane. For this reason no towns or hamlets have sprung up in the two parishes that, in the opinion of affiant, are large enough to give the excess of female and adult labor necessary to operate successfully a shrimp and oyster canning plant, these plants requiring at certain stated seasons a very large number of operators; however, the work is so irregular and the labor turn-over so heavy that it would be impossible to secure this labor, unless it was the labor in excess of the natural requirements of the ordinary town that could, at a moment's notice, be secured when wanted. The labor, although that of children, women and elderly men, is highly skilled and must come from years of association with the picking of shrimp. The ordinary woman, unacquainted

with the picking of shrimp, being unable to pick or shell even as much as one-fifth of that of skilled persons and as [fol. 105] these laborers work piece work it is unable to hold them unless they are skilled enough to earn a reasonable pay.

That affiant further says, that for years past it has been the habit and custom of Biloxi fishermen to go to the Louisiana Marsh and there catch fish and shrimp in small boats, which shrimp were in turn sold to a freight boat belonging to a factory operator either of Louisiana or Mississippi; likewise a large number of hardy fishermen living in the parishes above mentioned would catch shrimp in small boats and sell these shrimp either to the Biloxi boats or the representative of the few Louisiana factories. The ability to carry these shrimp to Biloxi resulted in a keen competition among the various factory owners for their purchase of these shrimp and kept the price of shrimp high enough to pay both natives and non-residents a reasonable wage for their daily arduous task. That this was the result of competition is shown by the fact that last year the average price of shrimp in Louisiana was $9.00 per barrel, whereas in the state of Alabama, where no such competition was allowed, the fisherment received $5.00 or $6.00 per barrel for identical shrimp. These shrimp, after being caught, were then transported to Biloxi and packed in Biloxi, Biloxi being about forty or fifty miles distant from the marsh across a body of quiet water, and also being located on a high sandy shore with an abundance of very finest of water and with a climate that is noted throughout the United States for its healthfulness. The living conditions being so excellent, as well as the other attractions such as schools, etc., brought to Biloxi large numbers of persons who were willing to work at one business a part of the time and during the rush season to assist in the packing of shrimp, thereby producing at all times an abundance of labor without which the average shrimp factory cannot be successful. These shrimp, after being [fol. 106] brought to Biloxi and canned, are shipped to all parts of the United States, some of the shrimp being shipped to various countries of Europe, and practically all of the shrimp, regardless of same being packed in Biloxi or in Louisiana, become the object of a vitally scattered

interstate commerce, every state in the Union and nearly every foreign land drawing on this supply for a part of the shrimp used by it.

Affiant further states, that while during the last past few years a number of factories have successfully operated, canning shrimp on the western banks of the Mississippi River, that for the past twenty-five years there has been no successful operation of canning plants on the eastern bank of the Mississippi River. During that period of time numerous persons, both from Louisiana and from Biloxi, have attempted to operate these plants but due to the inability to secure proper labor, the natural viciousness of the climate, the poor water conditions, none of these plants have continued under a long successful management by any one person, and while some of the plants are in existence now that have operated for years past they have operated through a series of managements and mishaps going from one hand to another and affiant knows of no plant, except that of Caernovan Packing Company that has had a continued successful existence and this plant was wiped out during the present summer by reason of the fact that the State of Louisiana used that part of St. Bernard Parish as a spillway for the Mississippi River, a large part of another, Plaquemine Parish, being a permanent spillway for the Mississippi River, so that during flood time the waters of the Mississippi flow almost continuously over a part of these parishes and at this time affiant is informed that a plan is being formed in New Orleans for continuing the above spillway where the packing plant is located.

That in affiant's opinion, it would not be possible to successfully can and pack shrimp in that part of Louisiana [fol. 107] known to himself and his business associates and any effort made to comply with the present Louisiana shrimp law would, in the opinion of affiant, largely injure and destroy his business in Biloxi, Mississippi, and result in not only an unsatisfactory — in Louisiana, but in compelling affiant and his associates to live under conditions which would be largely injurious and destructive to their health and future happiness.

That affiant's plant and its equipment is worth at least $125,000.00 and that the plant and equipment of the Sea Food Company, in the opinion of affiant, is worth $150,000.00. That the effect of the continued operation of the

Louisiana shrimp law would be largely to destroy the value of the above plants and equipment and its present immediate effect would be to prevent affiant and the Sea Food Company from carrying out the agreed- referred to in the bill of complaint and from being able to successfully conduct their interstate business so as to satisfy the demands and requirements of customers in all parts of the United States who have ordered shrimp from both affiant and the Sea Food Company. That its further effect would be to destroy or injure the means of livelihood of at least three or four thousand people in the city of Biloxi, comprising some eight hundred families, virtually compelling these people to sacrifice their homes in Biloxi, Mississippi, at a loss and to move with themselves and families to a state and to a locality where the social and health conditions in no wise can compare to that of Biloxi. That these people's lives have been lived right around packing houses and packing plants and that they know no other way in which to make a living. That there are no local industries in Biloxi that could accommodate them in the future were the packing plants removed or injured, and the second effect of the Louisiana law and its enforcement would be to tear these people from their native soil and require them to commence an adventurous existence in the marshes of the state [fol. 108] of Louisiana that would injure their children both physically and morally and destroy their home ties that have been created over a period of years.

Affiant further says that if he attempts to violate the law that he has been notified that not only will his men be imprisoned for the violation of the law, but that valuable boats owned by affiant and Sea Food Company will be confiscated and lost, each of these boats being of a value in the neighborhood of $4,000.00.

Affiant further states that, in his opinion, and in the opinion of other men who have spent a lifetime in this business, not object to conservation is intended by the shrimp law herein referred to as these shrimp, being migratory, come each year in renewed quantities to the Louisiana marsh, and there is no provision in the act complained of that in anywise assists the state of Louisiana in augmenting the amount of shrimp within its borders, nor is there any necessity for these shrimp as a food for the people of the state of Louisiana as more than ninety-five

per cent of all shrimp caught in the State of Louisiana are either packed and canned and shipped out of the state, or shipped out of the state in the raw state.

That affiat is informed and believes that the conservation officials of the State of Louisiana recognize this fact and agree to this condition by allowing certain persons in Louisiana to ship from the state by express shrimp with the hulls on after said shrimp have had their heads removed, this being what is called the raw shrimp business, and to affiant's own knowledge, while the above law was in process of being passed by the legislature of the state of Louisiana, the representatives of these interests desiring its passage publicly stated, at a hearing before the Louisiana Legislature, that the object of the passage of this bill was not for the purpose of conserving to the people of Louisiana either the supply of shrimp or any fertilizer resulting from the hulls and heads of said shrimp, but with the purpose and object of compelling non-residents of Louisiana to remove from Louisiana to en-[fol. 109] gage in the packing or canning of shrimp, thereby increasing the industrial life of Louisiana.

Affiant further says that the amount of the hulls produced for fertilizer is negligible; that while some forty or fifty per cent of the hulls are dried and made into shrimp bran in the state of Louisiana that this bran is immediately shipped from the state in interstate commerce and used by fertilizer companies in other states, but as a matter of fact the entire shrimp bran business is a negligible part of the shrimp industry, in the whole of the United States the yearly output being valued at less than one per cent of the shrimp output, but affiant further states that as a general rule the shrimp hulls and heads serve no useful purpose but are thrown into the bayous and bays of the state of Louisiana to be then destroyed by crabs and other fish.

Affiant further states that at the present time the shrimp packing part of both his and the Sea Food Company's plant is practically closed and the damage being caused thereby is large and continuous and without a possible chance of the loss ever being regained by affiants, and therefore at this time his loss by reason of the enforcement of this law is irreparable.

Affiant further states that before the passage of the law herein complained of, and irrespective of same, he had made a thorough and complete study of the economical conditions prevailing over the entire state of Louisiana with the view of placing a plant for the packing of shrimp in Louisiana, and that, as a result of this study, he decided that no operation of such a plant by him in said state could be economical or so as to yield a profit on the money invested by him in the operation of said business.

And further deponent sayeth not.

(Sig.) R. Hart Chinn.

Sworn to and subscribed before me, on this the — day of September, A. D. 1927.

(Sig.) Antonio Perisich, Notary Public. (Seal.)

[fol. 110] AFFIDAVIT OF OSCAR OLIVER ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Oscar Oliver who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that without exceptions of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they

are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to con-
[fol. 111] serve the shrimp heads and hulls.

And further affiant sayeth not.

(Sgd.) Oscar Oliver

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927.

(Sgd.) Eugene Peresich, Notary Public. (Seal.)

[fol. 112] AFFIDAVIT OF LEWIS GARLOTTE, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Lewis Garlotte who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that without exceptions of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to conserve the shrimp heads and hulls.

[fol. 113] And further affiant sayeth not.

(Sgd.) Lewis Garlotte.

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927.

(Sgd.) Antonia Peresigh, Notary Public. (Seal.)

[fol. 114] AFFIDAVIT OF A. R. HEIDENHEIM, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927.

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, A. R. Heidenheim, who being by me first duly sworn did depose and say:

That she is Secty. and Treasurer of the Sea Food Company, a corporation domiciled at Biloxi, Mississippi, and engaged in packing shrimp and oysters.

That said corporation also has a plant on the West bank of the Mississippi River engaged in packing shrimp.

That on account of the odors and other obnoxious features of shrimp heads and hulls, affiant has been hindered in the packing of said shrimp. In disposing of said shrimp heads and hulls that she has tried to sell said shrimp heads and hulls in the open market in Louisiana but found no purchaser therefor, and knowing that one large plant in Louisiana had a grinding machine or dryer offered to give her shrimp heads and hulls to the plant if said plant would remove said heads and hulls, but this offer was refused, and at the present time at a loss and expense, affiant is compelled to haul said shrimp hulls away from her plant on a barge and dump them into some of the bayous of Louisiana.

Affiant further states upon information and belief that there are only two shrimp hull dryers in Louisiana, one at Algiers and one at Homer, and that the shrimp hulls and

heads after being dried are almost entirely shipped in the [fol. 115] raw state from the State of Louisiana to other states, principally to Biloxi, Mississippi.

And further affiant sayeth not.

(Sgd.) A. R. Heidenheim, Secy. & Treas.

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927.

(Sgd.) Eugene Peresich, Notary Public. (Seal.)

[fol. 116] AFFIDAVIT OF L. G. MOORE, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, L. G. Moore, who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that with the exception of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the

Mississippi River where any effort is made to conserve the [fol. 117] shrimp heads and hulls.

And further affiant sayeth not.

(Sgd.) L. G. Moore.

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927. (Sgd.) Eugene Peresich, Notary Public. (Seal.)

[fol. 118] AFFIDAVIT OF E. C. TONSMEIRE ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, E. C. Tonsmeire, who being by me first duly sworn did depose and say:

That he is president of the First National Bank of Biloxi, Mississippi, and as an employee of said bank has for the past twenty years had an intimate acquaintance with the shrimp and oyster business in the State of Mississippi and the State of Louisiana, said bank having for a large number of years handled business transactions with the largest concerns doing business in both places.

That by reason of these business dealings he has studied this industry and is fully familiar with its financial and economical side.

Affiant further states that there is invested in this business in the City of Biloxi directly approximately a million and a quarter dollars, and indirectly several millions of dollars.

That there is situated in Biloxi about sixteen factories packing shrimp and oysters, employing during the season between four and five thousand people, and living off of the earnings of the shrimp industry are approximately seven or eight thousand people.

Affiant further states that at the opening of the 1927 shrimp season all of these factories were shut down, re- [fol. 119] sulting in the loss of employment to thousands

of people, many of whom were women and children without other means of support or employment.

That this condition was caused by the presence in the waters of the State of Louisiana of the enforcement officers of the Conservation Department of Louisiana, who were threatening to arrest any fishermen who violated the Louisiana shrimp act and confiscating the valuable boats engaged in this business.

That immediately upon the granting of the injunction in the above case, this condition was remedied by means of said injunction, thousands of people have been able to make a living and hundreds of cases of dire distress and want both in the eastern part of Louisiana and the western part of Mississippi have been prevented.

That the shrimp and oyster business is a very competitive one and almost the entire profit goes to the catchers of this article of commerce, and for this reason there has been numerous attempts made to monopolize the business and in the opinion of the affiant the sole purpose of the so-called Louisiana shrimp act was a desire on the part of a few canners of shrimp who have plants in both Louisiana and Mississippi to prevent the entrance into Louisiana of competition in the purchase of these shrimp.

That no other purpose could be served by the said act as the supply of shrimp in Louisiana is greater than the possible demand and the head and hulls are of very small value as shown by this case.

That the only man who now uses these hulls in manufacturing fertilizer shut down a plant in Biloxi where an unlimited amount of hulls could have been obtained, and changed from manufacturing fertilizer from shrimp hulls to manufacturing the same from other substances, mixed with a small part of shrimp hulls.

Affiant further states that if said law was continued in force that it would create a monopoly in favor of those [fol. 120] engaged in packing shrimp west of the Mississippi River, to such an extent that the price of shrimp could be increased in all parts of the United States, as the chief competition to the packers in the above territory comes from shrimp packers on the coast of Mississippi.

Affiant further states that the coast of Mississippi is peculiarly adapted to the canning of shrimp on account of its

clear pure water, but that it is not practical to manufacture shrimp west of the Mississippi River in the State of Louisiana, for the reason that there is a greater lack of community life and the absence of pure water needed in the manufacture of these shrimp to make the same of high market value.

Affiant further states on information and belief that there is an increasing demand for what is known as raw shrimp, that is, shrimp packed in ice and shipped to various parts of the United States to be used by hotels and restaurants in their raw state.

That a great many of the persons engaged in this business are citizens of Louisiana as well as citizens of Mississippi, and this industry cannot be carried on unless the Louisiana shrimp law is either disobeyed or held invalid, and affiant is informed and believes that the industry is now being carried on in Louisiana in increasing size.

And further affiant sayeth not.

(Sgd.) E. C. Tonsmeire.

Sworn to and subscribed before me, this the 21st day of October, A. D. 1927. (Sgd.) Antonia Peresich, Notary Public. (Seal.)

[fol. 121] AFFIDAVIT OF TONY WILLIAMS ON BEHALF OF PLAINTIFF—Filed October 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Tony Williams who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fishermen and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that without exceptions of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to conserve the [fol. 122] shrimp heads and hulls.

And further affiant sayeth not.

(Sgd.) Tony Williams.

Sworn to and subscribed before me, this the 22 day of October, A. D. 1927.

(Sgd.) Bert O. Gunn, Notary Public. (Seal.)

[fol. 123] [Title omitted]

AFFIDAVIT OF R. HART CHINN

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, R. Hart Chinn, a resident of Biloxi, Harrison County, Mississippi, who being by me first duly sworn did depose and say:

That he, affiant, is manager of the plaintiff corporation in the above styled case and is thoroughly familiar with all the facts set out and described in the bill of complaint filed in this case.

That the contract filed as a part of the bill of complaint in this case was regularly and legally executed by and between the Foster Fountain Company, Inc. and the Sea Food Company, and is, at the present time, a valid and legal contract.

That affiant would not have been able to carry out the terms of said contract with the so-called shrimp law of the State of Louisiana in force and effect, and prior to the time of the granting of the temporary injunction in this case, had been prevented from carrying out the terms of said contract, and unless an injunction granted in this case is continued, affiant will be by the Conservation Department of said Louisiana, prevent- from carrying out the terms of this contract by the confiscation of his boats and the arrest and imprisonment of the men operating said boats.

That said contract as aforesaid is now being complied with by affiant from shrimp caught in the State of Louisiana [fol. 124] and brought from said State to the State of Misissisip, where the same are packed and canned and delivered to the Sea Food Company as well as delivered to the Sea Food Company in their raw state.

Affiant further states of his own knowledge that he was present at a meeting of a committee of the Senate and the Legislature of the State of Louisiana where the so-called shrimp act was being discussed, the same having been referred to said committee by the State Legislature, and at said meeting the Hon. John Dymond one of the attorneys representing the interest seeking such legislation, was questioned as to the value of shrimp hulls as a fertilizer and stated that the purpose of this act was not to conserve said shrimp hulls but that they were included in the act only for the purpose of compelling all the shrimp caught in Louisiana to be manufactured in Louisiana.

Affiant further states that at Violet, Louisiana, one of the two plants operating on the East side of the Mississippi River, all shrimp hulls and heads are placed on a barge and carried out into the lake and dumped therein, and that affiant knows of no person on the East side of the river who makes any attempt whatsoever to conserve said shrimp hulls, and that said shrimp hulls have no commercial value on said East side of the river.

Affiant further states that he is advised and believes that whole shrimp known as raw shrimp are continuously shipped out of the State of Louisiana without any interference from the Conservation Department of the State of Louisiana.

And further affiant sayeth not.

(Sig.) R. Hart Chinn.

Sworn to and subscribed before me, this the 21st day of October, A. D. 1927. (Sig.) Antonio Peresich, Notary Public. (Seal.)

[fol. 125] AFFIDAVIT OF ALEX MISTICOS, ON BEHALF OF PLAINTIFF—Filed October 27, 1927

(Exhibit Attached to This Affidavit Transmitted in the Original by Order of Court)—Filed October 27, 1927

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named Alex Misticos, who, by me being duly sworn, makes oath that:

I am the proprietor of the Belmont Cafe, Jackson, Mississippi. Upon October 25, 1927 I sent the following telegram to New Orleans, Louisiana:

"Jackson, Miss., Oct. 25, 1927.

Paul Bougon Fish & Oyster Company, Inc., 1223 Peters Street, New Orleans, La.

Send by night express twenty-five pounds headless Louisiana sea shrimp.

Belmont Cafe."

In due course, I received from the City of New Orleans and from the addresses in said telegram the shrimp ordered.

(Sgd.) Alex Misticos.

Sworn to and subscribed before me, this 26th day of October, 1927. (Sgd.) Mrs. C. H. McCall, Notary Public.

Copy.

[fol. 126] AFFIDAVIT OF ALEX MISTICOS—Filed October. 26, 1927, on Behalf of Plaintiff

(Exhibit Attached to This Affidavit Transmitted in Original by Order of Court)

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county the within named Alex Misticos, who states that he is the proprietor of the Belmont Cafe in Jackson, Mississippi; that he buys raw shrimp from Paul Bougon Fish & Oyster Company, Inc., of New Orleans, Louisiana; that they are shipped to him raw shrimp, with the hulls on them, the heads taken off; that they come to him by express and are shipped in cases containing approximately fifteen to twenty pounds per case; the said shrimp being packed in ice in order to preserve them. Affiant buys in this manner about two cases every two or three days, and buys them from New Orleans, Louisiana, all the year around; that he herewith attaches as Exhibits 1 and 2 hereto tags taken from cases of oysters or shrimp, which were received by him on Saturday morning October 22nd, 1927, from said Paul Bougon Fish and Oyster Company, Inc., New Orleans, Louisiana. Affiant states that he can obtain such shrimp from New Orleans, Louisiana, which are sea shrimp, in unlimited quantities.

(Sgd.) Alex Misticos.

Sworn to and subscribed before me, this 24th day of October, 1927. (Sgd.) M. M. McGowan, Justice of the Peace and ex-officio Notary Public, Fifth Supervisors District, Hinds County, Miss.

[fol. 127] AFFIDAVIT OF R. HART CHINN—Filed Oct. 26, 1927, on Behalf of Plaintiff

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison

County, Mississippi, R. Hart Chinn, a resident of Biloxi, Mississippi, who, being by me first duly sworn, did depose and say:

That he is the Manager of Foster Fountain Company, Inc., a corporation operating a sea-food packing plant in the City of Biloxi, Harrison County, Mississippi; that said Foster Fountain Company, Inc., operates some twenty or more boats for the purpose of catching shrimp and transporting same to Biloxi, Mississippi, and that, to the personal knowledge of affiant, said Foster fountain Company, Inc., has procured license for said boats as required by the laws of the State of Louisiana, has paid the ten cent per barrel tax on all shrimp caught by said boats in the Louisiana waters, and has fully complied with or attempted to fully comply with all the provisions of the laws of the State of Louisiana relative to procuring license, and the payment of taxes, for the operation of said boats in the catching of shrimp in the Louisiana waters, and the transporting of said shrimp to the State of Mississippi, including the tax per barrel on said shrimp.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me this the 24th day of October, A. D., 1927 (Sgd.) J. W. Swetman, Notary Public, City of Biloxi, Miss.

Copy.

[fol. 128] Affidavit of Donald W. Howe—Filed October 26, 1927, on Behalf of Plaintiff

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Donald W. Howe, a resident of Biloxi, Mississippi, who being by me first duly sworn did depose and say:

That he is a Chemist, having obtained a B. S. Degree at Mississippi College, Jackson, Mississippi, at the close of the 1913-1914 session of said College; that on Friday, Octo-

ber 21st, 1927, there was delivered to affiant approximately five pounds of shrimp heads and tail skins which had been removed from shrimp by the ordinary method used by shrimp packers in removing heads and skins from shrimp, the shrimp from which said heads and skins were removed having been cought in the Louisiana waters; that said shrimp heads and skins were delivered to affiant with the request that he make a chemical analysis of same for the purpose of determining the fertilizer value of said shrimp heads and skins; that this affiant made such chemical analysis and found said shrimp heads and skins to contain the following fertilizer value: Phosp-ate (P205) eighty-eight one-hundredths of one per cent.; Nitrogen three and fifty-seven one-hundredths per cent.; Potash (K20) twenty-two one-hundredths of one per cent.; that in addition to the above affiant found said shrimp heads and skins to contain seventy and eighty-five one-hundredths per cent. moisture and five and thirty-seven one-hundredths per cent. ash.

And further affiant sayeth not.

(Sgd.) Donald W. Howe.

Sworn to and subscribed before me this the 25th day of October, A. D. 1927. (Sgd.) Eugene Peresigh, Notary Public.

[fol. 129] Affidavit of L. J. Folse—Filed October 27, 1927 on Behalf of Plaintiff

[Title omitted]

Personally came before me the undersigned officer in and for the State of Louisiana, Parish of Orleans, City of New Orleans, who by me being duly sworn makes oath that his name is L. J. Folse; that he is thirty-nine years of age; that he is the General Manager of the Mississippi State Board of Development and lives at Jackson, Miss.; that he spent fifteen years of his life in New Orleans, Louisiana, and that he became acquainted with what is known as the fresh shrimp business as carried on in the State of Louisiana; that under such business large quantitites of sea shrimp have at all times been shipped out of the City of

New Orleans into Mississippi, Alabama, Tennessee, New York, Ohio and other parts of the Union; that such shrimp are caught in the salt waters of Louisiana and is a very great business in interstate commerce; that some times the shrimp are shipped out with the heads off, always with the hulls on; some times with both heads and hulls on; that they are put in cases or barrels packed in ice so as to preserve them during the course of shipment.

Since the passage of what is known as the Shrimp Act Bill by the Legislature of the State of Louisiana, he has had occasion to visit Louisiana and has made some special study as to the operation and enforcement of the Act and its effect upon the fresh shrimp business; that from such investigation he has found and ascertained, and so states to be a fact, that the fresh shrimp business, that is to say the sale of raw sea shrimp caught in the waters of Louisiana, has been continuously carried on since the enactment of the Legislation as before; that the Act has not been construed or enforced as to apply to salt shrimp or sea shrimp shipped out of the State which are not intended to be canned out of the State, but which are intended to be used as a food. Affiant states that he has ascertained from such investigation that at all times since the passage of the Act large quantities of fresh shrimp have been and are now being shipped out of the City of New Orleans over the American Railway Express and the Southeastern Express Companies to points in other states with the hulls on, and in many cases both with the heads and hulls; that the fresh shrimp business is of great importance to fishermen and [fol. 130] shrimp dealers in the City of New Orleans; that it is a business which has constantly, and is constantly, growing; that by quicker methods of transportation the fresh shrimp may be shipped a greater distance without spoiling, and the people—the consumers—prefer fresh shrimp over canned shrimp and this business would increase in volume as methods of transportation and refrigeration increase. As soon as it shall be possible to ship shrimp by air transportation, or to preserve the shrimp in what is known as dry ice, the development of the business will be wonderful. Affiant states that there has been at no time, nor is there now, an effort existing in the State of Louisiana to restrain or prevent the shipment of such fresh

shrimp with the hulls and heads upon them. Upon the other hand such course of business is not regarded as being in violation of the Law.

(Sgd.) L. J. Folse.

Sworn to and subscribed before me, this 26th day of October, 1927. (Sgd.) J. H. Forcelle, Jr., Notary Public. (Seal.)

[fol. 130½] AFFIDAVIT OF L. J. FOLSE FOR PLAINTIFF—Filed October 27, 1927

STATE OF MISSISSIPPI,
County of Hinds,
City of Jackson:

Personally came before me, the undersigned officer in and for the aforesaid jurisdiction, L. J. Folse, who by me being duly sworn, makes oath that he is the General Manager of and for the Mississippi State Board of Development, and that, as such, he was present at a meeting of the legislative committee of the state senate of the State of Louisiana, when such committee had under consideration in 1925 what is known as the Shrimp Act Bill, now in force; that he was present when the Honorable John Dymond, one of the attorneys representing parties interested in the passage of the bill, made a speech before the committee; that said attorney was asked by a member of the committee as to whether or not shrimp hulls have any value, and he stated to the committee that the clause was placed in the bill for the purpose of compelling the canning of the shrimp in the State of Louisiana and to prevent the shrimp from being shipped out of the state for such purpose. That the Senator who asked him the question was Senator Delos Johnson from one of the parishes east of the Mississippi River.

(Sgd.) L. J. Folse. (Seal.)

Sworn to and subscribed before me, this 24th day of October, 1927.

(Sgd.) M. J. Conerly, Notary Public. (Seal.)

[fol. 131] EXHIBIT IN EVIDENCE

STATE OF LOUISIANA:

I, The undersigned Secretary of State, of the State of Louisiana, do hereby certify that the annexed and following seven pages contain a true and correct copy of the charter of the Foster, Fountain Company, Inc., domiciled in New Orleans, Parish of Orleans, Louisiana, as is shown by comparison with the certified copy of charter on file and of record in the archives of this office.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this 11th day of April A. D. 1922.

(Signed) James J. Bailey, Secretary of State.
(Seal.)

[fol. 132] CHARTER OF THE FOSTER, FOUNTAIN COMPANY, INC.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans,
City of New Orleans:

Preamble

Be it known, That on this 24th day of the month of February, in the year of Our Lord One Thousand Nine Hundred and twenty-one, and of the independence of the United States of America, the one hundred and forty-fifth, before me Andrew B. Booth, Jr., a Notary Public, in and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the several persons whose names are hereunto subscribed, all of the full age of majority, who severally and mutually declared unto me, said Notary Public, that availing themselves of the laws of the State of Louisiana relative to the organization of Corporations, and more especially Act No. 267 of the year 1924 of the General Assembly of the State of Louisiana, they have covenanted and agreed and by these presents do covenant and agree for themselves, their successors and assigns, to form them-

selves into a Corporation and body politic in law, for the objects and purposes, and under the stipulations hereinafter set forth.

Article I

Name and Title, Etc.

The name and title of this Corporation shall be the "Foster, Fountain Company, Inc.," and as such shall have and enjoy succession and existence by its corporate name for a period of fifty (50) years from the date hereof; it shall have the power and authority to contract, sue and be sued, and make and use a corporate seal, the same to break and alter at pleasure, to hold, purchase, lease, sell, mortgage, hypothecate or pledge property, real, personal or mixed, to make and issue notes and certificates of in- [fol. 133] debtedness; to buy and hold stock in any other company or companies that may assist this company in its objects and purposes; to name, elect, and appoint managers, directors, agents, clerks or other employes, to properly conduct its corporate business, and to make and establish such by-laws, rules and regulations as may be found necessary or desirable for the management of the business and affairs of the Corporation, and generally to do all and every other act, matter or thing necessary for the complete and proper carrying out of said business.

Article II

Domicile, Etc.

The domicile of this Corporation shall be in the City of New Orleans, Parish of Orleans, State of Louisiana, where all citations or other legal process shall be served upon the president, or in his absence, upon the Vice-President.

Article III

Objects and Purposes

The objects and purposes for which this Corporation is organized and the general nature of the business to be carried on by it, are stated and declared to be as follows:

1st. To do a general canning business of Oysters, shrimps and other sea foods and all vegetables and fruits;

2nd. To own and operate boats and various kinds of equipments in the conduct of said business.

3rd. To buy and sell and pack canned goods for food; to buy, construct and operate factories for the manufacture of canned goods for food; to do all other acts necessary or incidental to the conduct of the canning goods business, such as the manufacture of cans, raising or growing crops for canning, and to buy, rent or lease estate for any or all of these purposes.

4th. To preserve fruits, vegetables, meats and other articles of food in hermetically sealed cans; to preserve, [fol. 134] evaporate, can and pickle meats, all kinds of fruit and vegetables of the farm, garden or orchard; to buy and sell the same; and generally to deal in other articles and conduct all necessary business connected or incident to these purposes; to buy and sell merchandise of any kind, separately or in connection with the above purposes; and to acquire and hold such real estate as is necessary for the purpose of its business; and to manufacture, buy and sell cans and tinware generally;

5th. To purchase, can, jar and preserve vegetables, fruits and edible grains in wooden, tin or glass cans or jars; to purchase and manufacture wooden, tin or glass cans or jars, and any and all materials that may be necessary to the carrying on of the said canning, jarring, and preserving business; and to sell the said vegetables, fruits and edible grains in cans, jars or preserves.

6th. To construct, build, purchase, acquire, own, operate any and all houses, buildings, equipment, and real and personal property of every description whatsoever as may be necessary and proper for the accomplishment of any of the objects and purposes set forth herein, and generally to do any and all things that may be incidental to, suitable or necessary for the attainment of any of the above described objects and purposes and to exercise any of the powers conferred upon Corporations of this character by the laws of the State of Louisiana, and of the other States of the United States.

Article IV

Capital Stock, Etc.

The Capital Stock of this Corporation is hereby fixed at Fifty Thousand ($50,000.00) Dollars, divided into and represented by Five Hundred (500) shares of the par value [fol. 135] of One Hundred ($100.00) Dollars each. The Capital Stock may be increased in the manner provided by law to the sum of Seventy-five thousand ($75,000.00) Dollars. All stock shall be transferable upon the books of the company and in accordance with its by-laws and regulations.

Article V

Board of Directors

All the powers of this Corporation shall be vested and exercised by a Board of Directors composed of not more than seven (7) and not less than three (3) Directors, who shall elect from their number a President, Vice-President and Secretary-Treasurer, and such other officers as the Board of Directors shall deem necessary. The said Board of Directors shall be elected annually on the second Monday of the month of July each year, the first election to be held in the year 1921. All such elections shall be by ballot, at the office of the Corporation. Notice of annual meetings as well as of special meetings of Stockholders, shall be given by written notice mailed Thirty (30) days in advance of the date fixed for such meeting to each stockholder appearing as such on the books of the company, at his last designated address, or at the general delivery at New Orleans, if he has not designated an address. Each shareholder is entitled to one vote for each share of stock standing in his name on the books of the company, said vote to be cast in person or by proxy, and the majority of votes cast shall elect. The Board of Directors shall have the power to fill all vacancies which may occur on the Board, even though no quorum remains at the time such vacancies are to be filled. Failure to elect Directors on the day above specified shall not dissolve the Corporation, but the officers then in office shall remain in office until their successors are elected. The Di-

rectors may elect such other officers as they deem necessary or convenient for the carrying on of the company's business and shall have power to unite two or more offices, and to confer the same upon one person, or to dispose with any office in their discretion. The Board of Directors shall also [fol. 136] have power to make and establish, as well as to alter and amend, all by-laws, rules and regulations necessary and proper for the support and management of the affairs and business of the Corporation and not inconsistent with its charter. Three (3) Directors shall constitute a quorum for the transaction of bueiness. The Board shall have power, without referring to the stockholders, to borrow money, execute mortgages, to issue notes, pledges, bonds or other obligations, in such amounts and on such terms as in their judgment may be advantageous, and generally to do all things reasonably necessary or convenient for the proper carrying on of the business of the Corporation. At any meeting of the Board of Directors, any Directors, absent from the meeting may be represented by any other director, who may cast the vote of the absent Director according to the written instructions, either general or special, of such absent Director. Until the annual meeting in 192-, the Board of Directors shall consist of the following:

Martin Fountain, Jr., whose post office address is Biloxi, Mississippi, V. J. Olivari, whose post office address is Biloxi, Mississippi, R. Hart Chinn, whose post office address is Bilovi, Mississippi and Arthur Yancey, whose post office address is 1325 Nashville Ave., New Orleans, La., with the said Martin Fountain, Jr., as President, V. J. Olivari, as Vice-President, and R. Hart Chinn, Secretary-Treasurer.

Article VI

Amendments, Etc.

This act of incorporation may be modified, changed or amended, or this Corporation may be dissolved in the manner provided by law, by a vote of two thirds (⅔) of the entire outstanding Capital Stock of all classes, present or represented at a general meeting of the Stockholders convened [fol. 137] for such purposes, after a previous notice shall

have been given in the manner above required, to begiven of the annual meeting of the Corporation. The Capital Stock of the Corporation may be increased or decreased by proceedings in accordance with the laws of the State of Louisiana.

Article VII

Dissolution, Etc.

If this Corporation shall be dissolved, either by limitation or from any other cause, its affairs, shall be liquidated by three (3) commissioners, to be appointed at the meeting of the Stockholders convened for the purpose of liquidation, and to be elected by the votes of all the stockholders voting upon a parity. Said liquidators shall remain in office until the affairs of said Corporation shall have been fully settled and liquidated and they shall have full power and authority to transfer and give title to all the property and assets of the Corporation and to distribute the proceeds. In case of the death, disability or resignation of one or more liquidators, the vacancy shall be filled by the survivor or survivors.

Article VIII

Liabilities of Stockholders

No stockholder shall ever be held liable or responsible for the contracts or faults of said Corporation in any further sum then the unpaid balance due on the shares of stock owned by him, nor shall any mere informality in organization have the effect of rendering this Charter null, or of exposing any Stockholder to any liability beyong the amount of his stock.

Thus done and passed at my Law and Notarial Offices in the City of New Orleans, on the day, month and year, first above written in the presence of W. T. Barry and H. L. [fol. 138] Armstrong, competent witnesses, who have hereunto subscribed their names, with said appearers, and me, Notary, after due reading of the whole.

(Original signed) 1. Martin Fountain, Jr., 124⅔ shares. 2. V. J. Olibari, 124⅔ shares. 3. R. Hart Chinn, 124⅔ shares. 4. Arthur Yancey, 1 share.

Witnesses: H. L. Armstrong, W. T. Barry.

Andrew B. Booth, Jr., Notary Public.

Certificate of the Recorded of Mortgages

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersi*n*ged, Deputy Recorder of Mortgages, in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing Act of Incorporation of the "Foster, Fountain Company, Inc.," was recorded in the Mortgage Office Records of the Parish of Orleans, this State, o the 15th day of March, A. D. 1921, in M. O. B. No. 1253, folio No. 291.

(Signed) Robert Scott, Deputy Recorder of Mortgages.

[fol. 139] Subscription List to the Capital Stock of the Foster, Fountain Company, Inc., by Act Passed Before the Undersigned Notary Public on the 24th Day of February, 1921

New Orleans, Louisiana,
February 24th, 1921.

Total amount of Capital Stock	$50,000.00
Number of shares	500
Par value of each share	$100.00

Signatures of subscribers	Addresses	Number of shares
Martin Fountain, Jr	Biloxi, Miss	124 2/3
V. J. Olivari	Biloxi, Miss	124 2/3
R. Hart Chinn	Biloxi, Miss	124 2/3
Arthur Yancey	1325 Nashville Ave., New Orleans, La	1
Total number of shares subscribed for		375

Witnesses to above signature-: H. L. Armstrong, W. T. Barry.

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me the undersigned authority, the hereinabove named subscribers, Martin Foun-

tain, Jr., V. J. Olivari, R. Hart Chinn and Arthur Yancey, who signed the foregoing subscription list of the Capital stock before me Notary and in the presence of the two competent witnesses, whose names are thereto subscribed as such, and the said appearers thereupon declared and acknowledged unto me, Notary, in the presence of the said witnesses, that they signed and executed the foregoing subscription list of the Capital Stock of the Foster, Fountain Company, Inc., as there own free act and deed and for the uses and purposes herein set forth.

[fol. 140] In witness whereof, the said appearers in the presence of the undersigned competent witnesses, who have hereunto signed their names with said appears and with me, Notary, on this 24th day of February, 1921.

(Original signed) Martin Fountain, Jr., V. J. Olivari, R. Hart Chinn, Arthur Yancey.

Witnesses: H. L. Armstrong, W. T. Barry.

Andrew B. Booth, Jr., Notary Public. (Seal.)

[fol. 141] AFFIDAVIT OF TWO MEMBERS OF THE BOARD OF DIRECTORS OF THE FOSTER FOUNTAIN COMPANY, INC.

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me, the undersigned authority, Martin Fountain, Jr., and R. Hart Chinn, who upon being duly sworn depose and say:

That they are members of the Board of Directors of the Foster, Fountain Company, Inc., a corporation organized under the laws of the State of Louisiana; on the 24th day of February, 1921, by Act of Incorporation passed before Andrew B. Booth, Jr., Notary Public, in and for the Parish of Orleans, State of Louisiana.

That of the whole of the capital stock of the said corporation, i. e., Fifty Thousand ($50,000.00) Dollars, the sum of thirty seven thousand five hundred ($37,500.00) Dollars was subscribed and has been fully paid for.

Executed in Duplicate.

(Signed) Martin Fountain, Jr., (Signed) R. Hart Chinn.

Sworn to and subscribed before me this 24th day of February, 1921. (Signed Andrew B. Booth, Jr., Notary Public. (Seal.)

[fol. 142] CERTIFICATE OF NOTARY

This is to certify that the foretoing "Act of Incorporation" with the Certificate of Recordation appearing thereon is a true and correct copy of the Original "Act of Incorporation" of the Foster, Foundation Company, Inc.," passed before me on the 24th day of the month of February A. D. 1921, on file and of record in my Notarial Archives.

(Signed) Andrew B. Booth, Jr., Notary Public. (Seal.)

AFFIDAVIT OF STANLEY C. ARTHUR FOR DEFENDANTS—Filed October 27, 1927

[fol. 143] [Title omitted]

AFFIDAVIT OF STANLEY C. ARTHUR ON BEHALF OF DEFENDANTS

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Stanley C. Arthur, who being by me sworn, deposes and says:

That he is the Director of the Division of Wild Life of the Department of Conservation of the State of Louisiana; that having been directed by the Commissioner of Conservation to take certain pictures of a shrimp hulling and drying plant, to be used in the aforesaid litigation, he did proceed to the plant of the Dunbar-Dukate Co., Inc., at Westwego, Jefferson Parish, Louisiana, and he there took nine pictures of different views of the machinery and apparati incident to the drying of shrimp hulls and heads and he has attached hereto and made part hereof prints of these nine photographs so taken by him, numbered respectively, Arthur, Nos. 1 to 9, inclusive, for identification with this affidavit. These pictures indicate:

No 1, the outside view of the hull drying apparati or drying drums and houses;

No. 2, Engine or motive power for revolving drums;
No. 3, Detail of cogs to revolving drums;
No. 4, Rear views of Revolving drums;
[fol. 144] No. 5, Sacking scaffold;
No. 6, Detailed view of drying shrimp hulls and heads, after being dehydrated;
No. 7, Rear view of drying drums showing part of interior;
No. 8, View of drying plant, with boiler shed and stack;
No. 9, View showing location of their drying plant on Company's canal at Westwego, Louisiana.

The foregoing pictures are correct reproductions of the actual views as taken by him.

(Signed) Stanley C. Arthur.

Sworn to and subscribed before me, this 27th day of October, 1927. (Signed) H. J. Stansbury, Notary Public. Dy. Clk. Court of Appeals, Parish of Orleans. (Seal.)

[fol. 145] AFFIDAVIT OF JOHN DYMOND, JR., FOR DEFENDANTS—Filed October 27, 1927

[Title omitted]

AFFIDAVIT OF JOHN DYMOND, JR., ON BEHALF OF THE DEFENDANTS

Before me, the undersigned authority, on this 26th day of October, 1927, personally came and appeared John Dymond, Jr., who being by me first duly sworn did depose and say:

I am a resident of Plaquemines Parish, Louisiana, and a lawyer by profession, having been practicing law for thirty-seven years.

My home in Plaquemines Parish is located in the heart of the oyster industry, as well as in the heart of the shrimp industry, and I am thoroughly acquainted with the shrimp and oyster industry as they exist throughout the entire State of Louisiana.

I was leading counsel for the State of Louisiana in the litigation instituted in October, 1902 by the State of Louisiana against the State of Mississippi in the Supreme Court

of the United States to determine the proper boundary between the States of Louisiana and Mississippi of the Mississippi River, and in which a final decree was secured from the Supreme Court of the United States forever fixing and determining the said boundary, and in which case on April 23d, 1906 a decree was entered, as follows:

"This cause came on to be heard on the pleadings and proofs and was argued by counsel. On consideration thereof it is found by the court that the State of Louisiana, complainant, is entitled to a decree recognizing and declaring the real, certain and true boundary south of the State of Mississippi and north of the southeast portion of the State of Louisiana, and separating the two States in [fol. 146] the waters of Lake Borgne and Mississippi Sound, to be, and that it is, the deep water channel sailing line emerging from the most eastern mouth of Pearl River into Lake Borgne and extending through the northeast corner of Lake Borgne, north of Half Moon or Grand Island, thence east and south through Mississippi Sound, through South Pass between Cat Island and Isle au Pitre, to the Gulf of Mexico, as delineated on the following map, made up of the parts of charts Nos. 190 and 191 of the United States Coast and Geodetic Survey, embracing the particular locality:"

"And it is ordered, adjudged, and decreed accordingly."

"It is further ordered, adjudged and decreed that the State of Mississippi, its officers, agents and citizens, be and they are hereby enjoined and restrained from disputing the sovereignty and ownership of the State of Louisiana in the land and water territory south and west of said boundary line as laid down on the foregoing map."

"And that the costs of this suit be borne by the State of Mississippi."

I was leading counsel before the Legislature of the State of Louisiana in its session of 1926, at which session of the Legislature of Louisiana, was adopted Act 103, known as House Bill No. 177 by Mr. Ellender, the title to which was as follows:

"An act to declare all shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their

reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana; to provide penalties for the violations [fol. 147] of the provisions of this Act, and to repeal all laws in conflict herewith."

During the said Legislative session and the consideration of said Legislation by the House and the Senate there appeared people representing the proponents of said measures, and people representing the opponents of said measure, and that among those representing the opponents of said measure were the canning and packing interests of the State of Mississippi, and among the opponents of said measure was the Foster Fountain Company, Complainant herein, as represented by R. Hart Chin, President, and that the said R. Hart Chin addressed the Committee of the House considering said Legislation in opposition to said Legislation; that the Mississippi interests were represented by Arthur J. O'Keefe, Jr., an Attorney at Law, residing in the City of New Orleans, who appeared on behalf of the Mississippi interests, including Foster Fountain Company, Complainant, in opposition to said proposed Legislation, and that said Mississippi interests were further represented by Honorable John J. Kennedy, Mayor of Biloxi, Miss.;

That at the time of the introduction of said House Bill No. 177, and at the time of its consideration by the Committee of the Senate, said measure proposed to go into effect at once. Whereupon, the request was made on behalf of the Complainant and others, that opposition to said measure would cease if the date of its enforcement was postponed one year, or until June 15th, 1927, and said measure thereupon was passed by the House of Representatives and Senate, and approved by the Governor on July 18th, 1926, containing a provision to the effect that the law should not go into effect until June 15th, 1927 in order to permit any Mississippi interests to acquire factory sites in Louisiana.

As representing the said agreement, and as indicating its existence, affiant attaches hereto, marked "Dymond 1," a copy of the original compromise agreement, bearing the original signature of John Dymond, Jr.; C. L. Wise on behalf of the proponents of the measure, and Arthur J. O'Keefe, Jr., on behalf of the Mississippi interests, he act-

[fol. 148] ing as their attorney, and bearing the original signatures of Senator Jules G. Fisher, Donald Labbe and Delos R. Johnson;

That as evidencing the compromise and as acknowledging the same, affiant attaches hereto marked Exhibit "Dymond 2," the letter of John J. Kennedy, Mayor of Biloxi, Miss. under date of June 24th, 1926, recognizing said compromise, and affiant alleges that the Foster Fountain Company, Inc., is estopped from contesting the legality of said Legislation having agreed to it in the form in which it was passed by the Legislature of the State of Louisiana, and having gotten the benefit of the one year's delay to comply with said law, and complainant's contention is without equity.

I know that there are a number of sites, both in the Parishes of Plaquemines and St. Bernard, readily available for the erection of additional shrimp canneries, in the event that any of the Mississippi canneries desire to come in to Louisiana. I know that several canneries have already come in to the State of Louisiana and established factories here and are operating, who formerly operated in Mississippi. I know that the canneries of Louisiana are amply able to handle the products of the waters of the State of Louisiana of a sea food character for canning and packing.

One of the reasons that enabled me to secure the adoption by the Legislature of the State of Louisiana in 1926 of Act 103 was the fact that the State of Mississippi had a similar statu-*s* on its books prohibiting the exportation of oysters in the shell from the State of Mississippi except by express, a copy of which law will be hereinafter quoted.

There is a statute in Alabama that also restricts the fishing of shrimp to Alabamians under conditions therein described.

The sites that the State of Louisiana possesses for additional canning factories are first-class in every particular, and the statement that the State of Mississippi alone possesses sites furnishing adequate human comforts is in error, and as a matter of fact, property values along the Mississippi coast have advanced to such an extent as to [fol. 149] make their use for commercial purposes inadvisable, and the tendency there has been to dismantle plants and to convert them into residential sub-divisions,

and any Mississippi concern desiring to move into Louisiana could sell its Mississippi site at a profit and purchase a site equally good in Louisiana at a much reduced cost.

Under the operations of Act 103 of 1926 all shrimp exported from Louisiana, whether by any person, firm or corporation must have their heads and hulls removed in Louisiana before exportation, and any statement that conditions otherwise exist is untrue and not in accordance with the laws of the State of Louisiana.

It is untrue that Act 103 of 1926 imposes any greater burden upon corporations than it does upon individuals. The right of property of the State of Louisiana in the shrimp taken from the waters of the State passes only to the individual or corporation when the shrimp have been taken and handled in accordance with the laws of the State of Louisiana, which require that the head and hull shall be removed from such shrimp before any private ownership shall exist therein, the title in the meantime remaining in the State of Louisiana.

Act 103 of 1926 was in no wise designed to create a monopoly and did not do so, but merely endeavored to secure for the benefit of the State of Louisiana the enjoyment of her own natural resources that were the property of the sovereign State of Louisiana, and in which no individual citizen had any property right, and in which any person or corporation could acquire a property right that would become subject to commerce only upon the prior compliance with the conditions of said law.

The Foster Fountain Co., Inc. can establish a plant at a suitable site in Louisiana and operate as cheaply as it can in Mississippi. It can sell its Mississippi site at a profit for residential purposes.

The Statutes of the State of Mississippi on the subject of oysters are as follows:

[fol. 150] "Mississippi Code, Article 3518, Heinghways Ed. Sec. 6160, based on an Act of the Mississippi Legislature of 1913 which remains unrepealed to this date:"

Oysters in the Shell.—It shall be unlawful for any person to take oysters in the shell out of the State of Mississippi by means of any transportation, except that oysters in the shell may be shipped out of the State by express.

Any person violating the provisions of this Section shall, on conviction, be fined in a sum not exceeding Five Hundred Dollars, or imprisonment in the county jail, not exceeding six (6) months, or both, at the discretion of the Court."

(Signed) John Dymond, Jr.

Sworn to and subscribed before me this 26th day of October, 1927. (Signed) Rudolph J. Weinmann, Notary Public.

[fol. 151] EXHIBIT No. 1

Amendments to House Bill No. 177 by Mr. Ellender

On page 18 of the printed bill at the end of line 30 strike out the period and insert a comma, followed by the words "provided that, in order to permit canning factories located beyond the limits of this State which have heretofore been permitted to take salt water shrimp out of the State for canning purposes to adjust their business to the conditions imposed by this act, the provisions of this Act which require all salt water shrimp to be peeled or removed from their hull or shell in Louisiana and the shrimp head and hull or shell to be left in Louisiana shall not go into effect until June 15, 1927, as to those shrimp canners who shall have obtained from the Department of Conservation permits permitting such canneries until June 15, 1927, to remove from the State salt water shrimp unpeeled for canning in factories located beyond the limits of the State, conditioned upon the right being reserved to the Department of Conservation of Louisiana to revoke any such permit upon the failure to be determined as a matter of fact, after hearing, by the Department of Conservation of Louisiana, that such permittee or licensee has failed to comply with the conditions imposed in such permit, and the Commissioner of Conservation shall be authorized to issue permits in accordance herewith, which permits shall expire June 15th, 1927.

It is the intention and sense of this exception that the canning factories located out of the State which have heretofore gotten their salt water shrimp from Louisiana shall

be permitted to continue to do so under former conditions, until June 15th, 1927, except that the closed seasons herein established shall become effective upon the due promulgation of this Act.

(Signed) Jules G. Fisher, Donald Laffe, Delos R. Johnson.

Approved: (Signed) John Dymond, Jr., Chas. L. Wise, Arthur J. O'Keefe.

[fol. 152] EXHIBIT No. 2

City of Biloxi

John J. Kennedy, Mayor

Biloxi, Mississippi, June 24, 1926.

Mr. John Dymond, Jr., Atty., Maison-Blanche Building, New Orleans, La.

MY DEAR JOHN: I thank you for the copies of the Shrimp Bill that you were kind enough to send me and if there are any charges for same, if you will let me know the amount I will send you a check.

I suppose the compromise was best for all parties concerned but I want to repeat to you that in my honest opinion the future will show that my opponents are absolutely wrong about this matter, and I believe the future will convince them of that fact.

Whenever you are on the Coast would be glad to have you come to Biloxi that I might open your eyes showing you developments.

With very best wishes, I am,

Sincerely yours, (Signed) Jno. J. Kennedy.

JJK/lt.

[fol. 153] AFFIDAVIT OF CHARLES F. GREINER, FOR DEFENDANTS—Filed October 27, 1927

[Title omitted]

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared: Charles

F. Greiner, who being by me first duly sworn, did depose and say:

I am the President of the Southern Shell Fish Company, Inc. with its canning plant located at Harvey, Louisiana and the company is engaged in the business of canning and packing sea food products and vegetables.

We can at our plant large quantities of lake or salt water shrimp and in connection with the handling of the hulls and heads and shells of the salt water or lake shrimp, we installed in our plant in 1920 a hull or shell dryer. This we have operated successfully for the past seven years and the sales of our product in the shape of shrimp bran is as follows:

1920	$2,794.21
1921	1,940.12
1922	2,032.50
1923	2,413.00
1924	2,390.95
1925	3,144.71
1926	5,094.52
1927	4,328.18
August & September, 1927	2,250.00
Total	$26,388.19

Our season in the shrimp industry begins on the first of July of each year and I have therefore considered the months of August and September, 1927 as part of the shrimp year of 1928.

The foregoing total of $26,388.19 represents profits made by our company as a result of our making use of this by-product of our canning industry.

The sanitary laws of the State of Louisiana require that all of our canning factories shall be operated under the most sanitary conditions and the utilization of this shrimp drying apparatus contributes to better sanitary results.

[fol. 154] I took an active part in securing the adoption of the present Legislation in Louisiana regulating the shrimp industry and I believe that this Legislation is designed to best serve the interests of the State of Louisiana. We have no difficulty in disposing of our shrimp hull bran and have found a ready market therefor.

Being interested in the enforcement of the shrimp law, I was in conference with the Department of Conservation of Louisiana prior to June 15th, 1927 when the law went into effect. The shrimp fishing season, however, opened only on August 15th, 1927. The Department of Conservation was prepared to enforce this law when it was prohibited by the restraining order issued by Judge Holmes of Mississippi.

I have been engaged in the canning business for the past nineteen years, fifteen years in Louisiana, and I am thoroughly familiar with the shrimp canning industry in Louisiana and with those who are engaged therein and the plants engaged in that industry and also available locations for additional plants in Louisiana. There are a number of available sites in Louisiana for shrimp canning plants which have not yet been occupied by canning factories. The capacity of the canners of Louisiana is adequate to take care of all of the shrimp that may be caught in Louisiana waters and certainly if the available sites are used by any new canning industries coming into Louisiana they can adequately take care of all shrimp caught within Louisiana waters. I am familiar with the condition of the waters east of the Mississippi River in the Parishes of St. Bernard and Plaquemines, State of Louisiana, and I note that the majority of the shrimp taken by the Mississippi canners for packing in Mississippi have been taken by them from the waters of St. Bernard and Plaquemines Parishes in Louisiana, and south of the boundary lines established by the Supreme Court of the United States in the suit of State of Louisiana vs. State of Mississippi.

The parishes or counties of St. Bernard and Plaquemines are possessed of vast natural resources in the waters of these two parishes, but these two parishes have heretofore [fol. 155] not been given the advantage of the utilization of the products of their waters because the same have been taken into the State of Mississippi and the industry of manufacturing these natural products into articles of commerce carried on into the State of Mississippi notwithstanding the fact that there are many suitable sites for canning factories in the St. Bernard and Plaquemines Parishes presently unoccupied and where adequate labor might be secured and properly houses and cared for.

(Signed) C. F. Greiner.

Sworn to and subscribed before me this 25th day of October, 1927, at New Orleans, La. (Signed) Rudolph J. Weinmann, Notary Public.

[fol. 156] AFFIDAVIT OF RAYMOND L. COLSON FOR DEFENDANTS—Filed October 27, 1927

[Title omitted]

Affidavit of Raymond L. Colson, on behalf of defendant.

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared Raymond L. Colson, who, being by me first duly sworn, did depose and say:

I am a resident of Biloxi, in the State of Mississippi, and I am President and Manager of the Marine Fertilizer and Feed Company of Biloxi, Mississippi; the Marine Fertilizer and Feed Company of which I am president purchased a number of drying apparatus previously used for the drying of brewers grain, these having been purchased at a very much reduced value on account of the cessation of the manufacture of beer or malt liquors.

The Marine Fertilizer & Feed Company in turn sold these driers to the various shrimp canning factories in the State of Louisiana as follows, to-wit:

Dunbar Dukate Co., Inc., Weswego, La.
do. Lafitte, La.
do. Golden Meadow, La.
do. Myrtle Gove, La.
Indian Ridge Canning Co., Houma, La.
Houma Packing Co., Houma, La.
Grand Caillou Packing Co., Grand Caillou, La.
Empire Packing Company, Empire, La.
C. B. Foster Packing Co., Happy Jack, La.
Southern Shell Fish Co., Harvey, La.

I have seen all of these plants and they are in operation in the respective shrimp packing factories except that of the Empire Packing Company has not yet erected its drier nor has Dunbar Dukate Company, Inc., erected its drier at its Myrtle Grove Plant.

The purpose for which these drying plants were sold to these respective companies was to convert the heads and hulls or shells of shrimp caught in the shrimp industry [fol. 157] into a product that could be used for fertilizer and feed purposes.

I know that the Deep Sea Canning Company at Violet, La., also has a shrimp hull drying apparatus, but this was not purchased from our company.

I also know that the Pelican Lake Oyster and Packing Company of Houma, Louisiana has one of these shrimp drying apparatus, but it also was not purchased from our company.

My company sold one of these apparatus to the Martin Fountain Packing Company at Biloxi, Mississippi. This plant at Martin Fountain Packing Company has been run at intervals.

Our company the Marine Fertilizer and Feed Company endeavors to buy whatever quantity it can of these dried shrimp hulls and last year purchased approximately thirty thousand ($30,000.00) dollars worth; and in addition thereto we furnished the bags and paid the freight, bringing the total cost to us up to approximately thirty-four thousand ($34,000.00) dollars or more.

There are twelve (12) of these shrimp hull drying plants in Louisiana and only one in Mississippi.

My company is in the market to purchase all of this material that it can at a reasonable price.

(Sgd.) Raymond L. Colson.

Sworn to and subscribed before me this 25th day of October, 1927. (Sgd.) Rudolph J. Weinmann, Notary Public, New Orleans, La.

Copy.

[fol. 158[AFFIDAVIT OF JAMES V. DUNBAR FOR DEFENDANTS—Filed October 27, 1928

[Title omitted]

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared, James V.

Dunbar, who, being by me first duly sworn, did depose and say

I am the President of Dunbar, Dukate Company, Inc., a Louisiana corporation engaged in the canning and packing of sea food products and vegetables with canning plants located at Myrtle Grove, Louisiana, Westwego, Louisiana, Lafitte, Louisiana, Golden Meadow, Louisiana and we are also operating the Deep Sea Canning Company plant at Violet, Louisiana, the latter being under lease with an option to purchase predicated upon the enforcement of the Louisiana shrimp law.

We also operate a shrimp and oyster canning factory at Pass Christian, Mississippi and one at Biloxi, Mississippi.

We have shrimp drying apparatus installed at our plants at Westwego, Louisiana, Lafitte, Louisiana, Golden Meadow, Louisiana and Violet, Louisiana. The one at Myrtle Grove, Louisiana has not been installed on account of the controversy in regard to the lease of the site occupied by our company at that place.

We have been manufacturing and selling shrimp bran for the years 1925, 1926 and up to October 1st, 1927 as follows

1925,	89 17	tons at $30 00	$2,675 00
1926,	63	tons at $30 00	1,890 00
1927,	68 85	tons at $30 00	2,065 56
Tota.,	221 022	tons at $30 00	$6,630 66

Our plants are operating in a much more sanitary condition where the shrimp hull dryer is used and under the regulations of the Board of Health of the State of Louisiana we are required to operate all of our plants under the most sanitary conditions.

We were ready to move our canning plant from Biloxi, [fol. 15 '] Mississippi to Louisiana in order to comply with the shrimp law of Louisiana enacted in 1926 and to that end we purchased a site for a canning factory at Slidell, St. Tammany Parish, Louisiana, and because of the attack on the constitutionality of this law we have delayed the erection of that cannery until the constitutionality of this law shall have been settled. We also contemplated the

acquisition of a site and the erection of a plant on the Leopold Canal at Phoenix, Louisiana but deferred carrying that through on account of the Caenarvon Crevasse and thereafter on account of the institution of this present litigation.

At our plants at Pass Christian, Mississippi and Biloxi, Mississippi it has been our custom to throw away our shrimp hulls and shells thereby losing the value represented by such by-product. In Louisiana we convert them into a commercial commodity and derive the profit arising therefrom.

We have a market for all of our shrimp bran, as we have a contract with the Marine Fertilizer and Feed Company for a period of five years with an optional renewal of five years not only to handle our entire product but any raw material that we may acquire from others and dried in any of our plants. We also have received frequent inquiries from other sources for this product especially from New York and from Germany.

I have been connected with the canning and packing industry for thirty-five years and I am thoroughly familiar with the industry both in the State of Mississippi and in the State of Louisiana.

I am familiar with the territory in the State of Louisiana adjacent to the waters of the Parishes of St. Bernard and Plaquemines in the State of Louisiana, and I know that there are many sites that may be acquired for shrimp packing and canning factories which are as yet unoccupied. I am confident that the canning factories of Louisiana, those now in existence and those that might be erected at these desirable points can adequately care for all of the shrimp that Louisiana waters may produce.

[fol. 160] The waters of the Parishes (or counties) of St. Bernard and Plaquemines are great sources of sea food supply. Heretofore this raw material fished from the waters of St. Bernard and Plaquemines Parishes has been taken into the State of Mississippi and the industry carried on in the State of Mississippi of canning and packing these sea food products and converting them into commercial commodities to the disadvantage of the State of Louisiana.

The hulls and heads of shrimp, that is, lake or sea salt water shrimp are a valuable by-product in the shrimp can-

ning and packing industry and should be conserved for the benefit of the State of Louisiana.

The plant which we leased at Violet in St. Bernard Parish, Louisiana, pending a decision as to the constitutionality of the shrimp law of 1926 has been operated by us during the present fall season on a profitable basis. There has been more labor available there than we have been able to use, and all of this labor had opportunity for schooling of their children, comfo-table habitation and opportunity to attend church.

(Sgd.) Jas. V. Dunbar.

Sworn to and subscribed before me this 25th day of October, 1927 at New Orleans, La. (Sgd.) Rudolph J. Weinmann, Notary Public.

Copy.

[fol. 161] Affidavit of Dr. L. H. Jastremaski, for Defendants—Filed Oct. 27, 1927

[Title omitted]

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared Dr. L. H. Jastremaski, who, being by me first duly sworn, did depose as follows:

I am the President of the Pelican Lake Oyster & Packing Company of Houma, Terrebonne Parish, Louisiana, which is engaged in the packing of sea foods and vegetables.

In connection with our packing of lake or salt water shrimp we operate at our plant a shrimp hull drying apparatus for the purpose of drying these shrimp hulls and making them valuable as a marketable article and we also grind these hulls.

Prior to the installation of this shrimp hull drying apparatus it cost us as estimated by me fifteen ($15.00) dollars a day to dispose of our shrimp hulls by burying them in the ground and covering them with dirt and disinfectant in order to prevent any bad or unhealthful and unsanitary odors or conditions. Since the use by us of this shrimp hull drying apparatus I estimate that we are making the equiv-

alent of sixty (60¢) cents a barrel on each barrel of raw shrimp purchased by us.

The Board of Health of the State of Louisiana requires that all of the canning plants in Louisiana shall be run under the most sanitary conditions possible and the use of this shrimp hull drying plant contributes largely to that result.

We are regularly disposing of all of our product from our shrimp hull drying apparatus under a contract which we have and which contract expires February 1, 1928, and we have a proposal for our product at a higher price than is being presently received.

I estimate that the profits coming from the operation of the shrimp hull drying plant since we have operated it have averaged about five thousand ($5,000.00) dollars a year and we have been operating it since about 1920.

(Signed) L. H. Jastremaski.

Copy.

[fol. 162] Sworn to and subscribed before me this 25th day of October, 1927. (Sgd.) Rudolph Weinmann, Notary Public, New Orleans, La.

Copy.

[fol. 163] In United States District Court

[Title omitted]

Order Permitting Clerk to Transmit Certain Exhibits in the Original—Filed February 1, 1928

It is ordered, adjudged and decreed that the Clerk of this Court, in preparing the record for the Supreme Court of the United States may, where necessary or desirable, include in the record, the original of any document, photograph or exhibit forming part of the record.

Ordered, adjudged and decreed this the 30th day of January, 1928.

(Signed) Louis H. Burns, District Judge.

[fol. 164] IN UNITED STATES DISTRICT COURT

NOTATION RE ORIGINAL EXHIBITS

The following exhibits are transmitted in the original, as per Order of Court, copied at page 164 of this transcript:

Nine photographs on behalf of defendants.

Invoice tag attached to affidavit of Alex Nisticos, on behalf of plaintiffs copied at page 125 of the transcript.

Invoice tag attached to affidavit of Alex Nisticos, on behalf of plaintiffs copied at page 126 of the transcript.

Map, attached to affidavit of Tony Guerra, et al., copied at page 67 of this transcript.

[fol. 165] IN UNITED STATES DISTRICT COURT

[Title omitted]

Proceedings had in open Court before the Honorable Rufus E. Foster, Louis Henry Burns, and E. R. Holmes, Judges, in the above entitled and numbered cause on the 27th day of October 1927, at New Orleans, Louisiana

Appearances: W. H. Watkins, Esq., W. L. Guice, Esq., and Messrs. Lemle, Moreno & Lemle (Mr. Lemle, Sr.), Attorneys for Complainant; Messrs. Dymond & Levy (John Dymond, Jr., Esq.), Percy Saint, Esq., Attorney General; Michael M. Irwin, Esq., Assistant to Attorney General; P. L. Sandoz, Esq., Attorneys for Defendants.

[fol. 166] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Watkins: When this restraining order was issued we were all anxious to get the temporary injunction heard. Judge Burns was out of Louisiana so we suggested that it be transferred to Atlanta and taken up by the three Judges there.

Mr. Saint, the Attorney General, wrote me a letter in which he said Mr. Irwin had gone to New York and suggested that we make application for temporary injunction

pending the final hearing and this order was issued on the 28th day of September 1927, reading: "Complainants and defendants agreeing thereto, it is ordered, adjudged and decreed that the application of the complainants for a temporary injunction pending final hearing of this cause be and is hereby passed and continued to the hearing and determination of this cause on the merits, the same to be heard, tried and determined by the Court of three Judges heretofore organized, composed of Rufus E. Foster, E. R. Holmes and Louis H. Burns, District Judges.

It is ordered, adjudged and decreed that the defendants have thirty days from this date within which to file answer or other pleas to the original bill of complaint, and that the temporary restraining order heretofore issued be and remain in force until the trial and determination of said cause on the merits.

Ordered, adjudged and decreed this, the 28th day of September, 1927.

(Signed) E. R. Holmes."

[fol. 167] This was approved by all Counsel in the case. Now, thirty days was allowed the Attorney General to file his answer; I think he filed it this morning. It is perfectly satisfactory for Complainants to go ahead with the temporary hearing this morning, but it is not satisfactory for this hearing to be submitted on the merits. We agreed with opposing Counsel to carry out what all of us conceived to be a temporary hearing on application for injunction.

Judge Foster: If you do that the Three Judge Court becomes functus officio if you try it without pressing motion for hearing. The Supreme Court ruled on that.

Mr. Watkins: When I sent the restraining order to Judge Holmes he sent me back an opinion. I read the opinion and I construed the opinion to mean that even if you did not press application for temporary injunction it could still be before three Judges,——

Judge Foster: I have reference to an opinion in the District Court over here in Texas, in which Judge Hutchinson and I think Judge Shepard and myself sat. I tried so many cases there that year I have forgotten the other District Judge there at that time. The Judicial Code says: "In such case," or words to that effect, "on the hearing of the [fol. 168] merits will be before the same tribunal," and I

construe that to mean, as I interpret that opinion, that unless the temporary motion for temporary injunction is pressed to hearing, not merely made, then the three Judge Court has no jurisdiction.

Mr. Watkins: The question of the three Judge Court is only important as to other cases that go to the United States Court of Appeals. I will read you this decision (reading):

Now, there is an application for interlocutory injunction here and it is being pressed; if we could only agree for a temporary injunction to issue that would save the restraining order and postpone the hearing on the merits.

Mr. Sandoz: I emphasized to Counsel the other day when this hearing of today was being arranged that the purpose of the new rule as well as the Statute was to avoid abuse of the writ of injunction, that temporary restraining order should be issued only where irreparable injury resulted.

Judge Burns: Now to take a temporary restraining order issued by a single Judge on an ex-parte motion and continue it beyond the reasonable period fixed by the rule, a period of ten days, would be in direct abuse of authority on the part of the Judge so doing; he has no right in my opinion to do so. The Statute contemplates a hearing in a reasonable [fol. 169] time, and that time is established as ten days. It is manifest that if such order was made and continued from time to time, even by stipulation of the parties, that the order itself would be of doubtful legality. The Judge has no right to ignore the Statute even by agreement of the parties. For that reason I refuse to consider this proposition of Counsel to let the case wait on the merits. I think we ought to hear and determine now whether Plaintiff is entitled to a preliminary injunction. That would dispose of the matter as a three Judge case.

Mr. Watkins: I was informed of your ruling and got ready and came over here to press our application for temporary injunction. It is agreeable to us to take order within sixty days and try on the merits. I am ready this morning.

Mr. Sandoz: We understand the preliminary order is now ceased and shall take this matter up on whether the preliminary injunction shall be granted or not.

Judge Foster: The preliminary order has not ceased.

Mr. Sandoz: We wish to file a plea of estoppal. This pleas reads as follows: (Reading).

In connection with this plea of estoppal we offer the affi- [fol. 170] davit of John Dymond, Jr., together with the annexed copy. The affidavit of Mr. Dymond is as follows:

Judge Foster: It verifies the allegation of the plea. You need not read it; just file them both.

Mr. Sandoz: They are original documents attached to and made part of the exhibit. We direct the Court's attention to the fact that these original documents are signed by the middle of paragraph one by the interested parties in this suit and by the Attorney for the Foster Fountain Company.

Judge Foster: Signed by the Attorney as representing the Foster Fountain Company?

Mr. Dymond: Including Mr. Chinn, President of the Foster Fountain Company, Inc. and Mr. O'Keefe and Mr. Keenedy, Mayor of the City of Biloxi, Miss. The evidence is there in their own handwriting.

Mr. Sandoz: I offer the affidavit of Mr. Percy Viosca, Jr. Director, Fisheries Division of the State of Louisiana, together with the original documents annexed thereto and made part of the affidavit, evidencing the fact the said Foster Fountain Company, Inc, is permitted to conduct fishing operations for salt water fishing in Louisiana since [fol. 171] *since* the adoption of this Act, and particularly pointing out these terms they have printed in them and made part of the contract between the applicant and the State of Louisiana. The original affidavit and annexed documents we offer in evidence.

Mr. Watkins: (Reading affidavit of Alex Mistocis).

Mr. Dymond: May it please the Court, we object to reading the affidavit unless it is offered in evidence.

Mr. Watkins: I have offered them in evidence, filed with the Clerk.

Mr. Dymond: They have not been offered yet. It is understood you will offer them?

Mr. Watkins: I consider that part of the record, filed with the Clerk.

Judge Foster: Filed with the Bill?

Mr. Watkins: No filed with the Clerk?

Mr. Dymond: If Counsel will offer them we will not object to his reading it.

[fol. 172] Mr. Walkins: I don't think I could be construed as doing anything else.

Judge Foster: Suppose you offer it in evidence.

Mr. Watkins: I offer in evidence all of the papers and exhibits which have been filed in rule.

Mr. Dymond: Adjourned until 2 P. M.

2 P. M. After recess:

Mr. Dymond: Considering the suggestion of the presiding Judge that it is unnecessary to dictate a return to the application for temporary injunction, Solicitors for Defendants offer, introduce and file in evidence the various affidavits, in connection with which copies have been furnished to Solicitors for Complainants, these affidavits consisting of the affidavits of Raymond L. Colson, Charles F. Greiner, Dr. L. H. Jastromaski, James V. Dunbar, Stanley C. Arthur, Percy Viosca, John Dymond, Jr.

Judge Foster: What is the purpose of those affidavits?

[fol. 173] Mr. Dymond: The purpose of those affidavits is to show that this thought on the part of the Complainant that the head and hull industry is a subterfuge, is not a fact and there are twenty-two factories in Louisiana now operating to convert these by-products into a commercial commodity, and one firm alone last year bought $30,000 of that material, and in the case of the Houma plant, make $5,000 a year, and in the case of the Southern Shell Fish Company, Inc. plant, they in the past seven years made two and a half times the capital of the company from the proceeds of the shrimp hulls which they have sold. We also have photographs of the apparatus that is used in the manufacture of that by-product industry.

I know the people of Louisiana are getting forty to fifty thousand dollars a year from this by-product, which they would not get if any of the shrimp went in Mississippi as it has been from year to year.

Objection Mr. Watkins: We want to have noted a general objection to all of the affidavits filed by Defendants on the ground that they are irrelevant and immaterial and hearsay.

[fol. 174] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE—Filed December 27, 1927

This cause came on to be heard on the application of plaintiffs for a preliminary injunction and was heretofore submitted upon the pleadings and evidence and argument of counsel, and the court having taken time to consider,

It is ordered, adjudged and decreed that the temporary restraining order heretofore issued herein be recalled and set aside; and,

It is further ordered, adjudged and decreed that the application of plaintiffs for an interlocutory injunction be and the same is hereby denied.

(Signed) Rufus E. Foster, United States Circuit Judge; Louis H. Burns, United States District Judge; E. R. Holmes, United States District Judge.

[fol. 175] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed January 6, 1928

To the Honorable Rufus E. Foster, Circuit Judge, Louis H. Burns and Edwin R. Holmes, District Judges, Composing Said Court:

Now, come the Foster-Fountain Packing Company and the Seafood Company, complainants in the above entitled cause, and conceiving themselves aggrieved by the order and decree made and entered by the above named Court in the above-entitled cause on the 27th day of December, 1927, wherein, among other things, said Court, composed of Judge Rufus E. Foster, Circuit Judge, Judge Louis H. H. Burns and Judge Edwin R. Holmes, District Judges, under Section 266 of the United States Judicial Code, denied the complainants application for an interlocutory injunction in said cause and recalled the restraining order

previously issued in said cause, do hereby appeal to the Supreme Court of the United States from said order and decree, and especially that portion of it denying and refusing the complainant's application for an interlocutory injunction and recalling the order allowing a restraining order previously granted and rendered in said cause, all of which reasons are set forth in the asignment of errors which is filed herewith. In view of the fact that complainants will sustain irreparable harm and damage by reason of the failure and refusal of said Court to grant them an interlocutory injunction, and by reason of the Court's recalling the restraining order previously granted in said [fol. 176] cause, these complainants pray that this, their petition for appeal, may be allowed, and that an order be made by said Court pending said appeal in the Supreme Court of the United States, reinstating the temporary restraining order previously granted in said cause by the Honorable Edwin R. Holmes, District Judge, and granting to the complainants an interlocutory injunction pending the hearing and determination of said cause on appeal to the Supreme Court of the United States.

Complainants further pray that a transcript of the record proceedings and papers upon which said order was made, duly authenticated, may be sent to he Supreme Court of the United States at Washington, D. C.

Dated this the 3rd day of January, 1928.

(Signed) Lemle, Moreno & Lemle, Watkins, Watkins & Eagen, W. L. Guice, Attorneys for Complainants, Foster-Fountain Packing Company and Sea Food Company.

[fol. 177] ORDER ALLOWING APPEAL

This day this cause came on to be heard on the application of the Complainants in the above entitled cause for an appeal to the Supreme Court of the United States from the decree rendered in this cause by three Judges denying the complainants application for an interlocutory injunction and recalling the temporary restraining order previously issued by the Honorable E. R. Holmes, District Judge, on the 6th day of September, 1927. It is ordered, adjudged and decreed that said appeal be and is hereby allowed; and it appearing to the Court that the complainants will sustain

irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and said restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court in the penal sum of $2,000.00 payable to the State of Louisiana, conditioned as provided by law.

Ordered, adjudged and decreed, this the 3rd day of January, 1928.

(Signed) Rufus E. Foster, Circuit Judge; Louis H. Burns, District Judge; E. R. Holmes, District Judge.

1/3/28.

We have no objection to the granting of the within order if the Court so desires.

(Signed) M. M. Irwin, Asst. to Atty. General.

[fols. 178 & 179] In United States District Court

[Title omitted]

Assignment of Errors—Filed January 6th, 1928

Now, come complainants, Foster-Fountain Packing Company and the Sea Food Company, and file the following assignment of errors upon which they will rely on their appeal from the decree made by this Court on the 27th day of December, 1927, in the above entitled cause:

(1) The Court erred in denying the complainant's application for an interlocutory injunction.

(2) The Court erred in recalling the temporary restraining order granted by the Honorable E. R. Holmes, District Judge, upon the 6th Day of September, 1927.

(3) The Court erred in not granting in interlocutory injunction to the complainants on their application therefor, and holding that the complainants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said E. R. Holmes, District Judge, as aforesaid.

(5) The Court erred in holding that the complainants were not entitled to the interlocutory injunction applied for.

(6) Other causes to be shown at the hearing.

(Signed) Lemle, Moreno & Lemle, Watkins, Watkins & Eagan, W. L. Guice, Attorneys for the Complainants.

[fol. 180] Bond on Appeal for $2,000.00 approved and filed Jan. 10, 1928, omitted in printing

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[fol. 181] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR EXTENSION OF TIME TO FILE TRANSCRIPT OF RECORD AND ORDER ALLOWING SAME—Filed January 26, 1928

To the Honorable Louis H. Burns, United States District Judge; Honorable E. R. Holmes, United States Circuit Judge, and Honorable Rufus E. Foster, United States Circuit Judge for the Eastern District of Louisiana, New Orleans Division:

The petition of Foster-Fountain Packing Company and Seafood Company, with respect shows:

I

That on the 27th day of December, 1927, there was rendered by your Honors a decree denying to the complainants a temporary injunction against the defendants, E. J. Haydel, Fred Schouest, L. R. Cabriac, Louis A. Marks,

Sheriff of St. Bernard Parish, State of Louisiana, Ernest Alberti, Sheriff of Plaquemine Parish, State of Louisiana, Leander H. Perez, District Attorney for the Parishes of St. Bernard and Plaquemine, State of Louisiana, Percy Saint, Attorney General of the State of Louisiana, Valentine K. Irion, Commissioner of Conservation of the State of Louisiana, all residents of the State of Louisiana, and recalling the temporary restraining order and denying the application for the interlocutory injunction as prayed for in the original bill in this cause, and your petitioners do further show that they have been allowed by your Honors an appeal to the Supreme Court of the United States from that decree and that citation has been issued by your Honors for all the defendants, returnable on the 2nd day of February, 1928.

[fol. 182] II

That your petitioners do further show that because the working force of the District Court, which is preparing this record, has been greatly reduced in its efficiency, due to recent illnesses among the clerks in the office preparing the transcript in this cause, and because of necessary work to be done in other important matters, your petitioners do not believe that they will be able to file the record in the Supreme Court of the United States by the 2nd day of February, 1928, which belief is confirmed by the attached certificate and affidavit made by Mr. C. D. Shaw, Chief Deputy Clerk of the District Court of the United States for the Eastern District of Louisiana, Orleans Division, Fifth Circuit, which certificate and affidavit are annexed hereto and made part hereof for consideration

The premises considered, your petitioners pray that they be granted an enlargement of time in which to file the record in the Supreme Court of the United States and that they be allowed thirty days from February 2nd, 1928, in addition to the time allowed by law, and, as in duty bound, your petitioners will ever pray, etc.

(Signed) W. H. Watkins, Lemle, Moreno & Lemle, Attys. M. L. Guice, McCloskey & Benedict, Attys.

STATE OF LOUISIANA,
Parish or Orleans:

Before me, the undersigned authority, personally came and appeared Claude D. Shaw, who being by me duly sworn, deposes and says:

That he is the Chief Deputy Clerk in and for the District Court of the United States for the Eastern District of Louisiana; that he is supervising the preparation of the transcript in the matter of the Foster-Fountain Co., Inc., et al. [fol. 103] versus E. J. Haydel, et al., No. 18,897 of the docket of the heretofore mentioned court; that because of the voluminous record and the great amount of testimony, together with the number of exhibits which must be filed, and, further that because of illness among the other clerks in the office preparing the transcript, he is unable to have the record prepared in the proper form for the purpose of having it presented by the petitioners, to the United States Supreme Court on the day set as the return day by this Honorable Court, say, February 2nd, 1928, and that an additional time is necessary for the purpose of completing the transcript.

(Signed) C. D. Shaw.

Sworn to and subscribed before me this 26th day of January, 1928. (Signed) Geo. D. Levevich, Dy. Clerk. (Seal.)

[fol. 19] ORDER EXTENDING TIME

This cause came on this day to be heard on the part of Foster-Fountain Company, Inc., et al. vs. E. J. Haydel, et al., complainants and appellants in the above styled cause, praying for an enlargement of time in which to file the record in this cause in the Supreme Court of the United States,

And, it appearing to the Court that the record is voluminous, contains many exhibits and a great many pages of testimony, and that because of illness of the clerks in the office preparing the transcript the complainants will hardly have time to file the said record in the Supreme Court of

the United States by the 2nd day of February, A. D. 1928, which is the time required by law.

It is thereupon ordered, adjudged and decreed that the said complainants and appellants be and they are hereby allowed, in addition to the thirty days allowed them by law, fifteen days from February 2nd, 1928, in which to file the record in this cause in the Supreme Court of the United States.

Ordered, adjudged and decreed this 26 day of January, 1928.

(Signed) Rufus E. Foster, Circuit Judge. E. R. Holmes, Judge. Louis H. Burns, Judge.

[fol. 185] In United States District Court

[Title omitted]

Praecipe for Transcript of Record—Filed January 14th, 1928

(1) Original bill of complaint, with exhibit thereto.

(2) Decree District Judge granting temporary restraining order.

(3) Temporary restraining order with returns thereupon.

(4) Motion of complainants for a permanent injunction.

(5) Agreement between complainants' and defendants' counsel in respect thereto.

(6) Decree continuing hearing on application for permanent injunction.

(7) Decree continuing application for interlocutory injunction to final hearing.

(8) Answer of defendants with all exhibits thereto.

(9) Plea of estoppel of defendants and affidavit in support thereof.

(10) Each and every affidavit offered by the complainants with exhibits thereto.

(11) Each and every affidavit offered by the defendants with exhibits thereto.

(12) All testimony offered in open court by the complainants and defendants on the hearing of the application for interlocutory injunction.

(13) Order denying application for interlocutory injunction.

(14) Petition for appeal to the Supreme Court of the United States with application for reinstatement of temporary restraining order.

(15) Decree of three judges allowing appeal and reinstating temporary restraining order.

(16) Bond on appeal.

(17) Each and every order or decree entered in the cause not hereinbefore specially set out.

(Signed) Gustave Lemle, W. Lee Guice, Watkins, Watkins & Eager, Attorneys for Complainants.

[fol. 186] State of Mississippi,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named William H. Watkins, of counsel for complainants in the above-entitled cause, who, by me being duly sworn, makes oath that he has this day sent by United States mail, postage prepaid, to the Honorable Percy Saint, Attorney General of the State of Louisiana, at New Orleans in the State of Louisiana, a true and correct copy of the foregoing praecipe.

(Signed) William H. Watkins.

Sworn to and subscribed before me, this 11th day of January, 1928. (Signed) M. J. Conerly, Notary Public. (Seal.)

[fol. 187] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 188-194] Citation, in usual form, showing service on Louis A. Marks et al., filed January 25, 1928; omitted in printing.

[fol. 195] THE UNITED STATES OF AMERICA:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA

The President of the United States to Percy Saint, Attorney General of State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a petition and order for appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Foster-Fountain Company, Inc. et als., are Appellants and E. J. Haydel et als., are Appellees, in the cause entitled Foster Fountain Company, Inc. et als., plaintiffs vs. E. J. Haydel et als., defendants, No. 18,897 of the Docket of this Court to show cause, if any there be, why the judgment rendered against the said Foster Fountain Company, Inc. et als., as in said Petition and Order for Appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis H. Burns, Judge of the United States District Court, at New Orleans, La., this 16th day of January in the year of our Lord one thousand nine hundred and twenty-eight.

(Signed) Louis H. Burns, Judge.

Clerk's office: A true copy. H. W. Mehan, Dy. Clerk. New Orleans, La., Jan. 16, 1928. (Seal.)

[fol. 196] SUPREME COURT OF THE UNITED STATES

STATEMENT OF APPELLANTS AND PLAINTIFFS IN ERROR UNDER PARAGRAPH 9, RULE 11—POINTS ON WHICH THEY EXPECT TO RELY AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed February 21, 1928

Point 1

Act #103 passed at the session of the Louisiana legislature of 1926, approved July 8, 1926, each and every section thereof, especially sections 4, 10, 12, 13, 14, 15, 16, 19 and

21 of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United States, in that said act, and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error, and each of them, of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

Point 2

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, as enforced and construed by the officers of the state of Louisiana, charged with the enforcement of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United States, in that said act and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error and each of them of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

[fol. 197] Point 3

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, violate paragraph three (3) Section eight (8) Article One (1) of the Constitution of the United States, known as the Commerce Clause of the Constitution of the United States.

Point 4

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, as enforced and construed by the officers of the state of Louisiana, charged with enforcement thereof, are in contravention of and violate paragraph three (3) section eight (8) article one (1) of the Constitution of

the United States, known as the Commerce Clause of the Constitution of the United States.

Point 5

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, are in contravention of and violate paragraph one (1) section ten (10) article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

Point 6

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, as enforced and construed by the officers of the state of Louisiana, charged with enforcement thereof, are in contravention of and violate paragraph one (1) section ten (10) article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

[fol. 198] Point 7

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 16, 19 and 21 of said act, and each of them, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 8

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, and each of them, as construed and enforced by the officers of the state of Louisiana charged

with enforcement thereof, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 9

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, and each of them, are in contravention of and violate section fourteen (14) article nineteen (19) of the Constitution of the state of Louisiana, prohibiting conspiracies and combinations in restraint of trade, monopolies, etc.

Point 10

The three-judge court should have granted the application of appellants and plaintiffs in error for an interlocutory injunction pending the hearing under the pleadings and proof in th-s case. Their failing and refusing to do so was error.

[fol. 199]

Point 11

The record discloses serious questions of law arising under the federal constitution and serious questions of discrimination supported by affidavits and proof, and that the plaintiffs in error and appellants will sustain serious and irreparable harm and injury by reason of the failure of the three-judge court to grant the application of appellants and plaintiffs in error for an interlocutory injunction pending the hearing. It was, therefore, error not to grant the application of appellants and plaintiffs in error.

Point 12

The granting of the interlocutory injunction prayed for by appellants and plaintiffs in error was required in order to prevent appellants and plaintiffs in error from suffering irreparable harm and injury pending the hearing and determination of the validity of the Louisiana act complained of and each section thereof as being in violation of the federal constitution of the United States hereinbefore

referred to, and in view of the seriousness of the alleged charges in respect to the invalidity of said act and the especial sections thereof hereinbefore set out, and in view of the affidavits filed in support thereof, and in view of the irreparable harm, injury and damage which the appellants and plaintiffs in error will suffer by reason of the enforcement of the act, the three-judge court should have granted the application of plaintiffs in error and appellants for an interlocutory injunction pending the hearing and determination in this cause.

Point 13

The hearing and determination of the correctness of the action of the three-judge court in failing and refusing to grant to the plaintiffs in error and appellants an interlocutory injunction pending the hearing of said cause on the merits, this court will accept as true the affidavit and proof offered by the appellants and plaintiffs in error, in support of the allegations contained in the original bill of complaint.

[fol. 200]

Point 14

In determining as to whether or not the three-judge court committed error in failing and refusing to grant plaintiffs in error and appellants an interlocutory injunction pending the hearing and determination of this cause, on final hearing, this court will consider the affidavits and proof offered by plaintiffs in error and defendants de novo, and will determine for itself as to whether or not the application of appellants and plaintiffs in error should have been granted.

Point 15

Where a state statute is attacked as being in violation of the constitution of the United States, and charges of invalidity are made in good faith, and are serious, or where the allegations and proof contain charges of discrimination in the enforcement of the act, and where the plaintiffs will suffer irreparable harm, injury and damage by reason of the enforcement thereof, an interlocutory injunction should always be granted pending the hearing and determination of the cause on the merits.

Point 16.

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, were not passed by the legislature of the state of Louisiana in the legimate exercise of its police powers, but are a mere subterfuge, and as passed and enforced, directly affect and obstruct interstate commerce between the states and foreign countries.

Point 17

Act #103 passed at the 1926 session of the Louisiana Legislature, approved July 8, 1926, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, were not passed in the exercise of any legitimate police power of the State of Louisiana, but as passed and enforced were intended and do deprive appellants and plaintiffs in error of their property without due process of law and deny them the equal protection of the law.

[fols. 201 & 202] Point 18

A state, in the exercise of its police power, can pass no law directly affecting interstate commerce.

Point 19

Act #103 passed at the 1926 session of the Louisiana state legislature, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, were not passed for the purpose of conserving the natural resources of the state, but passed for the purpose alleged, and in the enforcement and operation thereof necessarily violate the Fourteenth Amendment of the Constitution of the United States, in the particulars hereinbefore set forth, and impose a direct burden upon interstate commerce.

Point 20

Under the facts in this case and the law applicable thereto the application for interlocutory injunction should have been granted.

W. H. Watkins, Gustave Lemle, W. L. Guice, Attorneys for Plaintiffs in Error and Appellants.

[fols. 203 & 204] STATEMENTS OF APPELLANTS AND PLAINTIFFS IN ERROR OF THE PARTS OF THE RECORD WHICH THEY DEEM NECESSARY FOR THE CONSIDERATION THEREOF

Appellants and plaintiffs in error deem that the parts of the record hereinafter referred to are necessary for a proper consideration of the case.

1. Original bill of complaint with exhibits thereto.
2. Decree of district judge granting temporary restraining order.
3. Application of appellants and plaintiffs in error for injunction pending the hearing.
4. Agreement between appellants, plaintiffs in error, and defendants' counsel in respect thereto.
5. Decree continuing the hearing on application for interlocutory injunction to final hearing.
6. Answer of defendants with exhibits thereto.
7. Plea of estoppel of defendants and affidavits in support thereof.
8. Each and every affidavit offered by the appellants and plaintiffs in error, with exhibits thereto.
9. Each and every affidavit offered by defendants with exhibits thereto.
10. Order denying application for interlocutory injunction.
11. Petition for appeal and decree allowing the same.
12. Bond and assignment of error.
13. Each and every decree or order made in the cause.

W. H. Watkins, Gustave Lemle, W. L. Guice, Attorneys for Appellants and Plaintiffs in Error.

[fol. 205] STATE OF MISSISSIPPI,
Hinds County:

Personally came before the undersigned officer in and for the aforesaid state and county, the within named William H. Watkins, who by me being first sworn, makes oath that he is one of the attorneys for the plaintiffs in error and appellants in the case of Foster Fountain Packing Company and Seafood Company vs. Haydel, being cause No. 768 on the docket of the Supreme Court of the United States,

October Term, 1927; that he is authorized to make this affidavit; that upon the 18th day of February, 1928, he sent to the Honorable Percy Saint, Attorney-General of the State of Louisiana, a true and correct copy of the statements and the points on which appellants and plaintiffs in error expect to rely, in the Supreme Court of the United States, in the prosecution of their appeal in said case, and of the parts of the record they think necessary for the consideration thereof.

W. H. Watkins.

Sworn to and subscribed before me this the 18th day of February, 1928. M. J. Conerly, Notary Public. (Seal M. J. Conerly, Notary Public, Hinds County, Mississippi.)

[fol. 206] [File endorsement omitted.]

[fol. 207] IN UNITED STATES SUPREME COURT

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed March 2, 1928

Hon Charles Elmore Cropley:

Print entire record Haydel cases as filed in your office including portions designated by appellants as well as all other portions not designated by them.

Peyton R. Sandoz, Asst. Attorney General, 403 New Court Bldg.

[File endorsement omitted.]

Endorsed on cover: File No. 33,220. E. Louisiana D. C. U. S. Term No. 768. Foster-Fountain Packing Company, Inc., and Sea Food Company, appellants, vs. E. J. Haydel, Fred Schouest, L. R. Cabriac, et al. Filed February 14th, 1928. File No. 33,220.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]8

No. 36569

L. O. JOHNSON, JR., AND SEA FOOD COMPANY, TANAS HEBERT, ET AL., APPELLANTS,

vs.

E. J. HAYDEL, FRED SCHOUEST, L. S. CARRIAC, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

FILED FEBRUARY 19, 1929

(33,221)

(33,221)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 769

L. O. JOHNSON, JR., AND SEA FOOD COMPANY, TANAS HEBERT, ET AL., APPELLANTS,

vs.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

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[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

In Equity. No. 19011.

L. O. Johnson and Sea Food Company

v.

Louis A. Marks et al.

Bill of Complaint—Filed Jan. 20, 1928

To the Honorable District Court of the Eastern District of the State of Louisiana, at New Orleans sitting:

Comes L. O. Johnson, an adult resident and actual citizen of Biloxi, Harrison County, Mississippi, trading and doing business as the Johnson Fish & Oyster Company, and the Sea Food Company, a Louisiana corporation, organized under the laws of the State of Louisiana, domiciled and having an office and place of business in New Orleans in said state, in this their original bill of complaint against Louis A. Mereaux, Sheriff of St. Bernard Parish, in the State of Louisiana, an adult citizen of said parish and State; Ernest Alberti, Sheriff of Plaquemines Parish, in said State of Louisiana, an adult citizen of said State and parish; Leander H. Perez, District Attorney in and for the Parishes of St. Bernard and Plaquemines, in the State of Louisiana, an adult resident of the Eastern District of the State of Louisiana; Percy Saint, Attorney General of the State of Louisiana, an adult resident of New Orleans, in the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the [fol. 3] State of Louisiana, an adult resident of New Orleans, in the State of Louisiana; James N. McConnell, Director, Oyster Division, Department of Conservation, of the State of Louisiana, an adult resident of New Orleans, in the State of Louisiana; E. J. Haydel, Fred Schouest, and L. R. Cabriac, adult residents of the State of Louisiana: each and all of said defendants heretofore mentioned being

actual citizens and residents of the Eastern District of the State of Louisiana, and residing within the jurisdiction of this Honorable Court, and respectfully show unto the Court the following statement of facts:

I

This suit is brought in a court of equity of the United States, and the jurisdiction of the Court is asserted and claimed for that, the complainants are threatened with and subjected to the irreparable harm, injury and damage hereinbefore set out, and are without adequate remedy except in a court of equity, for the purpose of preventing a multiplicity of suits, for injunction, and other equitable relief.

II

The Amount involved in this suit exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, in that the complainants have entered into a contract, hereinafter set out, for the purchase and sale of oysters in the shell of the value greatly in excess of Three Thousand Dollars, which they would be prevented from complying with unless they obtain the relief prayed for in this cause, and the value of the contract and the immunity of the complainants, and each of them, from the liability, penalty and [fol. 4] forfeiture complained of herein, and the value of the right of the Sea Food Company to sell to L. O. Johnson, and the value of the right of L. O. Johnson to accept compliance on the part of the Sea Food Company with the contract hereinafter set out, and the loss and inconvenience, harm, injury and damage which would be sustained by and caused to each of the complainants if denied the relief prayed for, greatly exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, as will more fully hereinafter appear.

III

This is a controversy arising over the Constitution and laws of the United States, in that the complainants allege, aver and claim that Sections 1, 2, 3, 4, 23 and 24 of Act Number 258, passed by the Legislature of Louisiana, and approved July 14, 1926, appearing in the public acts of the

State of Louisiana, a copy of which act is hereto attached and marked Exhibit "A," the same being asked to be considered as if set out herein in words and figures, violate and are in contravention of Paragraph 3, Sub-division 8, Article 1, of the Constitution of the United States, conferring upon the Congress of the United States the exclusive power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes, and said sections of said law, and each of them, are contrary and in violation of Paragraph 2 of Article 6, of the Constitution of the United States, containing the following language:

"This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the [fol. 5] judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

That said sections, and each of them, violate Article 1, of the Fourteenth Amendment to the Constitution of the United States, containing the following provision:

"I. Who are citizens.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Complainants further claim that said Act of the Legislature of the State of Louisiana, and especially the sections hereinbefore set out, if so construed as to deny the complainants the relief prayed for in this bill of complaint, violates Section 2 of the Bill of Rights of the State of Louisiana, in the following language:

"No person shall be deprived of life, liberty, or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be

taken or damaged except for public purposes and after just and adequate compensation is paid."

[fol. 6] And also Section 14, of Article 19, of the Constitution of the State of Louisiana, containing the following language:

"It shall be unlawful for persons or corporations, or their legal representatives, to combine or conspire together, or to unite or pool their interests for the purpose of forcing up or down the price of any agricultural product or article of necessity, for speculative purposes; and all combinations, trusts, or conspiracies in restraint of trade or commerce, and all monopolies or combinations to monopolize trade or commerce, are hereby prohibited in the State of Louisiana, and it shall be the duty of the Attorney General, of his own motion, or any District Attorney of the State, when so directed by the Governor or the Attorney General, to enforce this provision, by injunction or other legal proceedings, in the name of the State of Louisiana, and particularly by suits for the forfeiture of the charters of offending corporations, incorporated under the laws of the State of Louisiana, and for the ouster from the State of foreign corporations. Provided, however, that nothing herein contained shall prevent the Legislature from providing additional remedies for the enforcement of this section.

The provisions of this section are self-operative."

That said sections, and each of them, violate Article 1, Section 10, of the Constitution of the United States, which is in the following language:

[fol. 7] "Powers denied the Individual States.—1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque or reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

[fol. 8] The the complainant, Sea Food Company, is a corporation incorporated under the laws of the State of Louisiana, the object and purposes of which are stated in its charter granted to it by the State of Louisiana, to-wit:

"The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinabove set forth or contemplated by this charter."

That a copy of said charter is hereto attached and marked Exhibit "B" to this original bill of complaint, the same being asked to be considered as if set out herein in full in words and figures.

That said complainant has and maintains an office in the city of New Orleans, in the state of Louisiana; that it is engaged in the oyster business at Biloxi, Harrison County, Mississippi, and is engaged in the wholesale raw oyster business in the state of Mississippi, and between Mississippi, and other states in the Union; is engaged in the packing and canning and manufacturing the by-products of the shells of oysters, and shipping and selling the same in interstate commerce throughout the United States and foreign countries; that complainant, L. O. Johnson, is engaged in [fol. 9] a similar line of business; that complainant, L. O. Johnson, has a large oyster packing plant in Biloxi, Mississippi, with schooners and other equipment necessary to catch oysters; that the total investment in said business is approximately Seventy-five Thousand Dollars; and each of said complainants are engaged in buying, selling, packing and canning oysters, and in shipping and selling the same in interstate commerce.

That a brief statement of the oyster business may be stated as follows:

The oyster business of the United States originated in Chesapeake Bay, Maryland, where the oysters were canned a number of years before any cannery was established in the South. Sometime after its establishment in Maryland a number of Maryland citizens came to the Mississippi Gulf Coast and established the first cannery in Mississippi or Louisiana. This was probably fifty years ago and from this beginning a number of factories gradually sprang up

in Biloxi and Biloxi became the center of the southern oyster packing industry, most all of the other factories in Louisiana or Mississippi having been established by persons who had learned the business at Biloxi. The reason for this condition was both economical and physical, as while Louisiana had by far the largest supply of natural growth reef oysters, this supply being almost inexhaustible, still Biloxi is nearly as near to these oysters as any important town in Louisiana. Besides, this the travel way from Biloxi to the oyster beds is all a free expanse of gulf waters, while in order to get in to any populated community of Louisiana from the oyster beds it is most always necessary to traverse privately owned land or go through canals that are privately owned; also, Biloxi, having a healthful, salu- [fol. 10] brious climate, furnishing a much better home for the workers than could be furnished in a like community in Louisiana, and for this reason attracts the best type of fishermen, that is, those with the most ambition and intelligence. In addition to these reasons, — the packing and canning of oysters, as well as any other meats or vegetables, it is very necessary that one have a splendid supply of pure water and this in an almost perfect and unlimited state is found in the many hundreds of artesian wells along this Gulf Coast. The oyster industry developed soon two sides, the first being that of packing or canning what is called cove oysters. The method of carrying on this business is as follows: Men go out in large boats or schooners to the oyster reefs in Mississippi Sound or Louisiana Marsh and either dredge these oysters up from the bottoms by means of a basket which swings along the side of the boat as it is in motion, or tong them from the bottom with a contraption that looks like two rakes fastened together. The shells and small oysters are then knocked from the large bunches and thrown back for a further growth, and the mature oysters are brought in to the factory and loaded into open cars on baskets and these baskets are then placed in a closed box and steam is turned into the box, causing the oysters to immediately open, when they are taken from the steam box and women, children and old men very quickly, after they have become adept, extract from the shells the meat, which is then washed and weighed and placed into cans and further steamed for a few minutes,

labeled, and sent in shipment to all parts of the world. For, while oysters are to be found in nearly every part of the globe, eatable oysters for canning in commercial quantities are found in few places except the Coast of the [fol. 11] United States from Delaware to Texas, with the very largest natural reefs found inside and on the skirts of the fringes of marsh which forms the southern and part of the eastern boundary of Louisiana, extending for over two hundred miles east and west. In the other side of the industry, oysters are caught in the same manner, except with more care, and are brought into Biloxi and other points, and by skilled adult men are opened while the oyster is alive and the raw oyster is extracted from the shell, placed in a can which is packed in ice and shipped raw to all the states of the United States, so that one can obtain just as good an oyster cocktail in Minneapolis as he could in New Orleans. One side of the industry at the present time is nearly as large as the other, for while the packers have more money invested in their business, the profit obtained by the raw shipper is probably as large as the profit obtained by the packers. Biloxi obtains her oysters, aside from the supply in Mississippi, from that part of Louisiana lying east of the Mississippi River and North and west of the Gulf of Mexico and South of Orleans Parish, comprising the marsh or eastern part of the two parishes of St. Bernard and Plaquemines. This marsh is probably thirty miles wide and meanders with the shore line for a distance of ninety miles. In it are hundreds of bays, bayous and inlets, all of which have been found agreeable to the cultivation of oysters, and while oysters have been secured in large quantities from this territory for years, there is at the present time almost an inexhaustible supply remaining, for while the reefs that are worked sometimes become depleted, still if they are not tonged or dredged it will result in such a great accumulation of oysters on the reefs that they [fol. 12] will become rank as in the case of vegetables grown without thinning, and will lose their natural size and form in great bunches called cooning, thereby soon depriving them of any commercial value whatsoever. The supply of oysters in Louisiana at the present time is very greatly in excess of any possible demand of those factories on the east side of the Mississippi River who handle oysters. For

instance, on the east side of the Mississippi River there are two plants handling oysters, one is at Violet, Louisiana, and one is at Caernovan, Louisiana, presently the latter plant being out of business on account of the crevasse, and these two plants working together could probably handle 1,000 barrels per day; whereas, under normal conditions the plants at Biloxi have secured 3,000 barrels per day, having a larger capacity, however, than that, this capacity being at least 5,000 varrels per day, and were these oysters to remain uncaught it would only result in an accumulation on the bed that would soon destroy the value of the remaining oysters on the bed. The fact of the inexhaustible supply of Louisiana oysters is greatly proven by the fact that except for private cultivation Louisiana is one of the few states where no effort has been made to replenish the oyster beds through state efforts, the conservation activity being confined exclusively to proper supervision of the catching of oysters. In this respect Louisiana has a very wonderful and efficient system, having one of the best conservation departments in the southern states. On account of the Mississippi River dividing Louisiana, it is quite impracticable to transport oysters from the eastern to the western parishes, and this has not been done in any large quantities. [fol. 13] The western banks of the River furnish nearly all the domestic oysters used in Louisiana, that is, the neighborhood of Bayou Cook, Cyprian Bay, having an industry supporting probably 300 or 400 men where these oysters are taken from the reefs, and then sold to the consumers in Louisiana. This furnishing a complete supply of eatable oysters in Louisiana without ever touching any of the natural oyster beds or reefs. These domestic oysters are found about fifty miles below New Orleans on the west banks of the Mississippi River, but the principal oyster industry in Louisiana is centered around Homer and Morgan City, Louisiana, about one hundred miles west of New Orleans, wholly outside of the range of fishing in so far as the eastern banks of the river is concerned. Aside from this fact, around Morgan City, that is, in the bays and bayous of the gulf within catching distance from Morgan City is almost an inexhaustible supply of oysters, this being entirely separate and distinct from the parishes of St. Bernard and Plaquemines.

[fol. 14] V

Complainants show unto the court that the Sea Food Company, complainant, is engaged in the business of catching, packing and canning oysters, but does not have a factory or shucking plant in the state of Louisiana; and that the said complainant upon the 12th day of January, 1928, contracted to sell, transport and deliver to the complainant, L. O. Johnson, Jr., during the year 1928, 1,000 barrels of oysters in shell per day, and that the said Sea Food Company are to catch or purchase said shell oysters in the state of Louisiana aforesaid, and to convey and transport the same from the State of Louisiana to the complainant, L. O. Johnson, Jr., in the State of Mississippi; and that the obtaining of said oysters in shells is necessary on the part of said L. O. Johnson, Jr., in order that he may supply the demands of his business in interstate and foreign commerce, and in order that he may keep his plant at Biloxi, Mississippi, in operation, in which plant the said L. O. Johnson, Jr., has a large amount of money invested, to-wit, approximately the sum of Seventy-five Thousand Dollars; that it employs a large number of men, women and children, and that unless it obtains the supply of oysters under the terms of said contract from the Sea Food Company, that the business of said Johnson would be destroyed, its plant rendered valueless, its business ruined, and its employees thrown out of employment. That the said Sea Food Company desires to obtain said oysters in shells, either by catching and taking the same from the reefs situated in the parishes of Louisiana, aforesaid, or to purchase the same from some person, firm or corporation which has lawfully acquired the possession of same; that the existence and continuity of its business depends upon its ability to carry out [fol. 15] said contract, and that it is ready, willing and able to comply therewith; and that the said L. O. Johnson also is able, ready and willing to comply with the conditions, and covenants contained in said contract obligatory upon him, and is ready, willing and able to take, receive and pay for said oysters according to the contract price thereof. That under the Constitution and Laws of the United States, complainants are entitled to have and receive, one from the other, full and complete compliance

with the terms of said contract, and to have and receive the advantages, benefits and profits accruing from one to the other therefor. That each of said complainants now offer to comply with the conditions and covenants contained in said contract obligatory upon them. That a copy of said contract is hereto attached and marked Exhibit "C" hereto, the same being asked to be considered as if set out herein in full in words and figures.

[fol. 16] VI.

Complainants show unto the court that at the 1926 session of the Legislature of the State of Louisiana, approved July 14, 1926, the Legislature of the State of Louisiana passed an act known as Act No. 258 of 1926, a copy of which act has heretofore been made an exhibit to this original bill of complaint. That sections 2 and 3 of said act are as follows:

"Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State, to any firm or association composed of citizens or residents of this State, or to any corporation domiciled in, or organized under the laws of this State, having their factory or shucking plant or places of business located within the State, upon the terms and conditions and subject to the restrictions and regulations herein set forth, or under the authority of which may be imposed by the Department of Conservation of this State. No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for [fol. 17] the cultivation and propagation of oysters for any of the above purposes. Any person, firm, association or corporation, violating any of the provisions of this section shall be liable to the penalties hereinafter provided. Any person, firm, or corporation, properly licensed to operate

in the oyster industry in this State shall be permitted to employ such labor, resident or non-resident, as may be required and to employ such vessels and their crew, resident or non-resident, as may be required upon said vessels being properly licensed as herein otherwise provided. This right to employ such non-resident labor or non-resident vessels shall be confined to the operation of any licenses as carried on within the State of Louisiana.

"Section 2. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as relief in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw [fol. 19] oyster shells beyond the foregoing requirements may be used for the road building purposes, or ground for use as chicken feed or fertilizer, or any other purposes of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product it shall be lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified interest or property in the oysters so taken in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and after [fol. 20] the raw oyster shells herein described shall have

been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In the case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larceny or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon holding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

That Sections 23 and 36 of said Act are as follows:

"Section 23. Vessels, their tackle and appurtenances, used in the illegal taking of oysters from the waters of this State shall be seized and taken into possession by the officers and inspectors of the Department of Conservation charged with the enforcement of the conservation laws, and shall be delivered to the Sheriff of the Parish wherein the violation of [fol. 20] the law occurred, the Sheriff being authorized to permit of the release of said vessel, or of said vessel and cargo, from seizure upon the owner thereof furnishing bond with good and solvent surety, or sureties, satisfactory to the judge of the District Court having jurisdiction, in double the value of the vessel, its tackle and appurtenances, and cargo, if any, seized providing for the return of such vessel, its tackle and appurtenances, in good condition to abide the judgment of the Court.

"Such vessel shall be liable to forfeiture upon proceedings to that end being instituted in the name of the Department of Conservation by petition in an ordinary suit setting forth the cause of action and praying for the forfeiture of said vessel, its tackle and appurtenances, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel, with its apparel and appurtenances, whereupon said vessel, with its apparel and appurtenances, shall be sold at public auction by the Sheriff having jurisdiction, and the proceeds of sale of

said vessel, its apparel and appurtenances, less the costs of the seizure and of the proceedings, and of the keeping and sale of said vessel shall be paid into the State Treasury to the credit of the Department of Conservation.

[Sec. 22] "The cargo of the seized vessel, if perishable, shall be sold at once by the Sheriff, or the seizing officer, to the best advantage, and the proceeds of the sale disposed of in the same manner as the proceeds from the sale of seized vessels.

"Should the owner of the seized vessel be able to prove to the satisfaction of the Court before which the case is tried that the captain, and crew, of said vessel had agreed in writing to comply with the provisions of Section 18 of this Act in every particular, and that it was not the intention of said owner to permit or allow any infraction of said provisions of the law, then, and in that event, the owner of said vessel shall be held blameless, the vessel released from seizure upon the payment of all costs, and the captain, person, agent, officer, crew or members thereof of said vessel, or by whom, or under whose direction said vessel was used in the illegal taking of said oysters in violation of Section 18 of this Act shall be adjudged guilty of violating the provisions of said section, and shall be sentenced to imprisonment in the parish jail for not less than ninety (90) days, nor more than two (2) years, in the discretion of the Court.

"Section 24. That any person, firm or corporation, or common carrier, their agents and officers violating any of the provisions of this Act, where a punishment has not been otherwise provided, shall be guilty of a misdemeanor and [Sec. 22] shall upon conviction thereof pay all costs of the prosecution, and be fined not less than One Hundred Dollars ($100.00) nor more than Five Thousand ($5,000.00) Dollars, or be imprisoned in the parish jail for not less than ninety (90) days, nor more than two (2) years, or both fined and imprisoned at the discretion of the Court, for each offense.

"Upon a second conviction of any person, firm or corporation, or common carrier, their agents and officers, for violating any of the provisions of this Act, where a punishment has not been otherwise provided, all licenses issued to such person, firm or corporation, hereunder, shall be for-

feited, and it shall be the duty of the Judge of the District Court before whom such trial shall be had to declare and order such forfeiture as a part of his sentence."

[fol. 23] VII

The complainants show unto the court that each of the parties complainant hereto are ready, willing and able to comply with the terms of said contract hereinbefore set out, but that if the Sea Food Company shall attempt to take from the reefs in either of the parishes of the State of Louisiana heretofore referred to any oysters in shells, or shall acquire said oysters in shells from any person, firm or corporation having the right to take the same therefrom, and shall attempt to convey and transport the same into the State of Mississippi for the purpose of complying with said contract, that it will be prosecuted and its vessels and property seized for confiscation, and its agents, servants and employees will be arrested and prosecuetd by the defendants herein.

Complainants show unto the Court that if the sections of said Act complained of are valid, the complainant, the Sea Food Company, its agents, servants and employees, engaged in the fulfillment of said contract, will be subjected to prosecution and will be liable to a fine as therein provided of not less than Five Hundred ($500.00) Dollars, nor more than One Thousand ($1,000.00) Dollars, or to imprisonment of not less than six months nor more than one year, or to both, within the discretion of the Court.

The complainants show unto the Court that each act of shipment will be a separate offense, and that the contract which the complainant Sea Food Company, has entered into with complainant Johnson, would require several deliveries on the part of the agents and servants of the complainant during each day, and that the agents and servants of the [fol. 24] complainant L. O. Johnson would be subjected to the same prosecution if delivery should be taken under said contract in the State of Louisiana, and that the employees of each of said complainants, and complainants themselves would be annoyed, troubled, harrassed, and would be prevented from carrying out and performing said contract, and, in addition thereto, their vessels, equipment and property would be seized and subjected to forfeiture, by reason

of which the complainants, and each of them, their agents and servants, would suffer irreparable harm, injury and damage, and the complainants are without remedy except in a court of equity, as they have no adequate remedy at law.

[fol. 25] VIII

The complainants show unto the Court that each of the sections of the Act hereinbefore set out and hereinbefore referred to, violate the Fourteenth Amendment to the Constitution of the United States, for that while the Sea Food Company is forbidden from taking oysters from the territory hereinbefore described in the State of Louisiana, unless it shall have and maintain a packing plant in the State of Louisiana, that any individual who may be a resident of the State of Louisiana for however short a time is granted such right, and any corporation organized under the laws of the State of Louisiana maintaining such a plant as is referred to in the Act, may exercise such right, and that the complainants are, therefore, denied the rights and immunities of citizens and denied the equal protection of the law and deprived of their property without due process of law.

Complainants show unto the Court that the said Sea Food Company could only operate a canning and packing plant in the State of Louisiana contiguous to the waters of Louisiana at a great loss.

Complainants show unto the Court that Sections 2 and 3 of said Act, and each of them, seek to compel the said Sea Food Company to pack and can oysters in the State of Louisiana at a great and serious loss to itself as a condition precedent to their making and complying with the contracts made and entered into in interstate commerce, wherefore, all of said sections of said Act hereinbefore referred to, violate the Constitution of the United States, in that such [fol. 26] sections directly burden interstate commerce.

Complainants further show unto the Court that the Act of the State of Louisiana especially permits and authorizes oysters in the shell to become the subject of barter, sale and trade, and to become an article of interstate commerce, and permits the complainants, and each of them, to acquire the same in the State of Louisiana; but the said Act, and especially the sections hereinbefore referred to, violate

the Fourteenth Amendment to the Constitution of the United States, in that they are forbidden from shipping the same out in the hulls; and that for the same reasons the said sections of said act violate that section of the Constitution of the State of Louisiana hereinbefore set out.

Complainants further show unto the Court that the sections of said Act hereinbefore referred to, and each of them, violate the commerce clause of the Constitution of the United States, in that said sections, and each of them, impose a direct burden upon interstate commerce; that said Act and said sections therein complained of were not passed to conserve the natural resources of the State of Louisiana, because said Act expressly permits the natural resources of the State, to-wit, the oyster and the hulls, to become the subject of barter and commerce and to pass from the State of Louisiana; but the effect and purpose of said act is to require the packing and manufacturing of said oysters inside of the State of Louisiana, which requirement has no relation to a proper exercise of the police power of the [fol. 27] State of Louisiana, has no relation to a conservation of the natural resources of the state, was not passed with any view of conserving to the people of Louisiana the oysters, the shells or any portion thereof, but said Act was passed with the object, purpose and view of the conservation and preservation of said oysters, as well as the shells, as a subject of interstate commerce, but interstate commerce is directly burdened therein, in that the effect of said Act and the sections complained of is to compel and require that oysters be packed and canned in the State of Louisiana before actually entering into interstate commerce, thus directly burdening interstate commerce. That Sections 2 and 3 of said Act are therefore unreasonable, unlawful, and arbitrary, and enacted solely and only for the purpose of compelling the packing and canning of oysters in the State of Louisiana, and that, therefore, said sections, and each of them, violate the commerce clause of the Constitution of the United States, as well as the Fourteenth Amendment thereto, and that provision of the Constitution of the State of Louisiana hereinbefore referred to.

Complainants further show unto the Court that Sections 23 and 24 of said Act, and each of them, violate the Fourteenth Amendment to the Constitution of the United States,

as well as Section 14 of the Constitution of the State of Louisiana, as well as the Commerce Clause of the Constitution of the United States, in that the effect and purpose of said sections, and each of them, is not only to impose a direct burden upon interstate commerce, and to deprive the complainants, and each of them, of their right to contract, [fol. 28] and to deprive the Sea Food Company, a Louisiana corporation, of its right to take and catch oysters from the reefs in said parishes of the State of Louisiana, but to create a monopoly in the manufacture and sale of oysters, and place the same in the hands of a small number of corporations engaged in the business in the State of Louisiana; that the necessary effect of the enforcement of said Act will be to reduce the market price of shell oysters paid persons engaged in the business of catching the same, and to increase in interstate commerce the price of the oysters canned and packed.

Complainants show unto the Court that only a negligible quantity of the hulls and shells of the oysters have ever been, or are now being used in the manufacture of fertilizer, chicken feed, or in the construction of roads in the State of Louisiana; but that such portion thereof as has heretofore or is now being manufactured, either into chicken feed or fertilizer, is shipped in interstate commerce.

[fol. 29] That the alleged purpose in Section 3 of said Act of conserving raw oyster shells for the purposes therein stated, is a pure subterfuge, without any intention of conserving for the benefit of the people of Louisiana any of the natural resources of the state, but is a pretense purely for the purpose of burdening interstate commerce by preventing raw oysters in the shells to be shipped from the State of Louisiana for canning, and without any intent, idea or purpose of securing or preserving such oysters or shells for the benefit of the people of the State of Louisiana. That it is necessary for the complainant, Sea Food Company, to send its agents, servants and employees, boats and equipment into the state of Louisiana, in order that it may acquire by purchase or otherwise, raw oysters in the shell, in order that it may comply with its contract with its co-complainant. That the Sea Food Company is dependent upon the oysters which it may be able to obtain from that

portion of the State of Louisiana hereinbefore described, for the purpose of fulfilling said contract. That the complainant, the Sea Food Company, will be unable to fill said contract unless it can get such raw shell oysters from said source, and that the complainant, L. O. Johnson, Jr. will be unable to secure and supply the oysters for the operation of his plant, unless the complainants are able to enjoin the enforcement of said act, and the said L. O. Johnson, Jr. is able to secure from the complainant, the Sea Food Company, the raw oysters in shells referred to in said contract.

[fol. 30]

IX.

Complainants show unto the Court that Sections 2, 3 and 4 of said Act, and Sections 22, 23 and 24 of said Act, violate the Fourteenth Amendment to the Constitution of the United States, as well as Section 2, of Article 1 of the Bill of Rights of the Constitution of the State of Louisiana, for the reason that in the enforcement of said law, firms, persons and corporations in the State of Louisiana are daily shipping out in interstate commerce large quantities of oysters in shell, which are being shipped in barrels and sacks, and with full knowledge of the officers of the law charged with the enforcement of the Act, are permitted to ship the entire oyster out, and that the statutes complained of, by construction of the officers charged with the enforcement thereof, are being construed as applicable only to oysters going out of the state for the purpose of being packed or canned outside of the State. That persons, firms and corporations in the State of Mississippi are daily and customarily taking out in the shells large quantities of oysters for commercial purposes.

[fol. 31]

X.

Complainants show unto the Court that the charter granted to the complainant, Sea Food Company, hereinbefore referred to, which charter is made an exhibit hereto, constitutes a contract between the said Sea Food Company and the State of Louisiana, and that the Sections of said Act, and each of them, hereinbefore referred to, have the purpose of depriving the said Sea Food Company of rights

granted to it by its charter, and for that reason the said sections, and each of them, violate Section 10, Article 1 of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

[fol. 32] XI.

Complainants show unto the court that Louis A. Marks, Sheriff of St. Bernard Parish; Ernest Alberti, Sheriff of Plaquemine Parish; Leander M. Perez, District Attorney for the Parishes of St. Bernard and Plaquemine; Percy Saint, Attorney General of the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the State of Louisiana; James N. McConnell, Director, Oyster Division, Department of Conservation, of the State of Louisiana; E. J. Haydell, Fred Schouest and L. R. Cabriac, defendants, are all citizens and residents of the State of Louisiana, and are charged under the laws of the State of Louisiana, with the duty of enforcement of said Act; that all of said defendants reside within the jurisdiction of this Court, in the Eastern District of the State of Louisiana; that the complainants are ready, willing, able and anxious to proceed with the performance of said contract; that the complainant, Sea Food Company, has applied to the Conservation Department of the State of Louisiana for a license to take oysters from the reefs of said state in said parishes; that it has offered to pay all charges therefor and submit to all reasonable and proper conditions which the Conservation Department has the power to impose as a condition precedent thereto; that each of the complainants *are* ready, willing and offering now to pay all severance taxes, license taxes, and other charges, imposed by said Act or any section thereof; that the Sea Food Company only asserts the right to take oysters from the reefs of said parishes in the State of Louisiana during the periods of time provided by said Act, and offers to comply with all [fol. 33] regulations of said Act in respect to the time and manner of taking oysters from said reefs. However, complainants allege and aver that the said defendants have notified the complainants, that if they or either of them attempt to take any oysters from the reefs in the State of Louisiana above described, or either of them shall attempt

to convey or transport from the State of Louisiana any oysters in shells, or if either of them proceed with the performance and consummation of said contract entered into between the complainant heretofore set out, that the said defendants, who are the officers of the State of Louisiana charged with the enforcement of said Act, will promptly under the provisions of said Act interfere therewith by having them, their officers, agents or servants, arrested, and by forfeiting and confiscating their vessels, equipment and property.

Complainants allege, and aver that they are prevented from the carrying out of said contract in interstate commerce, and that, therefore, immediate and irreparable loss and damage is resulting and will continue to result to each of them, by reason of the unlawful acts and conduct of the defendants, who are proceeding to act and who will act under and by virtue of the terms of the Act of the Legislature of the State of Louisiana hereinbefore set out.

[fol. 34] XII

Complainants show unto the Court that while they allege and aver that the licenses and taxes imposed in said Act are unconstitutional and in violation of the Commerce Clause of the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, for the reasons hereinbefore set out, they offer to pay all such taxes and charges as a condition precedent to the right of the complainant, Sea Food Company, to take and catch oysters from that portion of the State of Louisiana hereinbefore referred to, and as a condition precedent to the removal of said oysters from the State of Louisiana. Complainants in all things offer to do equity, and they aver that pending the hearing and determination of this controversy, the Sea Food Company will not catch, take, convey or acquire any oysters in the whole shell in the State of Louisiana, or attempt to transport any from the State of Louisiana, except upon the payment of the taxes and charges provided for in said Act.

XIII

The premises considered, complainants pray that this original bill of complaint, with the exhibits, be received and

filed; that a temporary restraining order issue from this Court restraining the defendants from the enforcement of said Act against complainants, their agents, servants and property, and from in any manner preventing or interfering with the execution of that certain contract between [fol. 35] the complainants hereto, hereinbefore set out; and that they be restrained and enjoined from prosecuting either of the complainants, or their agents or servants; and that they be restrained from interfering with, seizing, or attempting to confiscate, or in any manner interfering with the boats, property or equipment of the complainants, or either of them, used in the performance of said contract; and that an injunction will issue after a hearing before three Judges, as provided by the Acts of Congress, enjoining and restraining the defendants, and each of them, as hereinbefore set out.

Complainants further pray that process issue requiring the defendants, and each of them, to plead, answer or demur to the allegations of this bill of complaint in accordance with the Equity Rules, but not under oath, which is expressly waived. And at the final hearing of the case the Court will render a permanent injunction, enjoining the defendants, and each of them, from the enforcement of said Act; and that the right of the complainants to make and execute said contract be fully determined and adjudicated, and that the defendants, and each of them, be perpetually enjoined from in any manner interfering therewith.

If complainants have not prayed for the proper relief, the Court will grant such other, further and general relief as may be just and expedient in the premises.

(Signed) Seafood Company, By A. R. Heidenheim,
L. O. Johnson, Jr.

[fols. 36 & 37] *Duly sworn to by A. R. Heidenheim and L. O. Johnson, Jr. Jurat omitted in printing.*

[fol. 38] EXHIBIT TO COMPLAINT

Charter

"Sea Food Company"

UNITED STATES OF AMERICA,
State of Louisiana,
City of New Orleans,
Parish of Orleans.

Be it known, That on this 27th day of the month of June, in the year one thousand nine hundred and thirteen, before me Gustaf R. Westfeldt, Jr., a Notary Public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the persons whose names are hereunto subscribed, who declared that availing themselves of the provisions of the laws of this State relative to the organization of corporations, they have covenanted and agreed, and do, by these presents, agree, bind, form and constitute themselves, as well as such other persons as may hereafter join or become associated with them, into a corporation and body politic in law, and for the objects and purposes, and under the agreements and stipulations following, to-wit:

Article 1

The name and style of this corporation shall be the "Sea Food Company" and under that name it shall have and enjoy the rights and privileges granted by law to corporations; it shall exist for a period of ninety-nine years from the date hereof; it shall have power and authority to contract, sue and be sued in its corporate name; to make and use a corporate seal, and the same to break or alter at pleasure; to hold, receive, purchase, convey, mortgage, hypothecate and pledge property, both real and personal; to issue notes and other obligations; to make and establish such by-laws, rules, and regulations for the corporate management and control of said company as may be deemed necessary and expedient.

Article 2

The domicile of said corporation shall be in the city of New Orleans, State of Louisiana, and all citations and other legal process shall be served on the president, and in his absence, on the vice-president. In case of the absence, or inability of both of said officers, then said process shall be served on the secretary.

Article 3

The capital stock of this corporation is hereby fixed at the sum of Three Thousand Dollars, divided into thirty shares of the par value of one hundred dollars each, which shall be paid for in cash, or may be issued at not less than par, in payment of property actually purchased by, or for [fol. 39] services rendered to, said corporation.

All shares of stock shall be full paid and nonassessable. No transfer of stock shall be binding upon the corporation unless made upon its books.

Article 4

The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinbefore set forth or contemplated by this charter.

Article 5

All the corporate powers of this company shall be vested in and exercised by a board of directors to be composed of three stockholders, a majority of whom shall constitute a quorum for the transaction of all business. The directors shall be elected annually by ballot of the stockholders on the first Monday of July of each year. Each stockholder shall be entitled to one vote for every share of stock owned by him and standing in his name on the books of

the company at least thirty days prior to such election. All elections shall be held under such rules and regulations as may be determined by the board of directors, but after at least ten days' notice of such election shall have been given to each stockholder, either by publication in one of the daily newspapers published in the city of New Orleans, or by notice addressed to each stockholder at his last known address. The directors thus elected shall continue in office for one year, or until their successors shall have been duly elected and qualified. No failure to elect shall be considered as a forfeiture of this charter. Any vacancy occurring on said board shall be filled by the remaining directors for the unexpired term.

Said board of directors shall, at its first meeting, elect from among its own number a president, a vice-president and a treasurer. They shall also elect a secretary. It may combine the office of the secretary and treasurer, and may even elect a secretary, who need not be a stockholder.

Article 6

No stockholder shall ever be held liable or responsible for the contracts, faults or debts of this corporation, nor shall any mere formality in its organization have the effect of rendering this charter null or of exposing a stockholder to any further liability than the unpaid balance due on the shares of stock owned by him.

[fol. 40] Article 7

This act of incorporation may be changed, modified or altered or this corporation may be dissolved with the assent of the stockholders owning two-thirds of the stock present or represented at a general meeting convened for that purpose after at least ten days' notice shall have been given to each stockholder in the manner above set forth.

In the event of the dissolution of this corporation, either by the expiration of its charter or otherwise, its affairs shall be liquidated by two commissioners to be appointed at the meeting which decides to liquidate. In case of the death or inability of any one of said commissioners, the survivor shall appoint a successor to him.

Article 9

Until the election to be held in July 1904, the following named stockholders shall constitute the first board of directors, viz: Henry E. Gamble, S. Gumbel and I. Rothschild, with the said Hy. E. Gamble as president, S. Gumbel as vice-president, and I. Rothschild as secretary and treasurer.

Thus done and passed at my office in the city of New Orleans, on the day, month and year herein first above written, in the presence of Fred H. Dumm and Frank Wm. Hart competent witnesses, who have hereunto signed their names with the said appearers and me, Notary, after due reading of the whole.

(Original Signed.)

Henry E. Gamble, Jos Shaw. I. Rothschild, Jos Shaw, By Hy. E. Gamble. S. Gumbel, Jos Shaw, By By. E. Gamble. Witnesses: Fred H. Dumm, Frank Wm. Hart. Gustaf A. Wiedfeldt, Jr., Notary Public.

I, the undersigned Recorder of Mortgages, in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing act of incorporation of the Sea Food Company was this day duly recorded in my office in Book 1008, Folio 324.

New Orleans, La., June 20th, 1911.

A true copy from the original act.

(Signed) Emile J. Lamport. Gustaf A. Wiedfeldt, Jr., Notary Public.

[Vol. 42] Decree in Condemnation

State of Louisiana,
County of Harrison,
City of Biloxi.

It is agreed by and between L. O. Johnson, Jr., trading as the Johnson Fish & Oyster Company, hereinafter referred to as the first party, and the Sea Food Company, a corporation under the laws of the State of Louisiana, acting herein by A. B. Rothschild, its duly authorized secretary

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In the Supreme Court of the United States

No. 768.

Foster Fountain Packing Co., Inc., and Sea Food Company, Appellants,

vs.

E. J. Haydel, Fred Schouest, L. R. Cabriac et al.

SPECIFICATION OF ASSIGNED ERRORS AS ARE INTENDED TO BE URGED.

The appellants, at the hearing of this cause, will present to the Court as grounds for review the following assigned errors:

(1) The Court erred in denying the appellants' application for an interlocutory injunction.

(2) The Court erred in recalling the temorary restraining order granted by E. R. Holmes, District Judge.

(3) The Court erred in not granting the interlocutory injunction to the appellants on the application therefor, and in holding that the appellants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said E. R. Holmes, District Judge.

(5) The Court erred in holding that the appellants were not entitled to the interlocutory injunction applied for.

In support of said assignments of error, the appellants will present to the Court, and rely upon for reversal of the decree appealed from, the points designated and printed in the record, Tr. 146.

No. 769.

L. O. Johnson, Jr., and Sea Food Company, Tanas Hebert et al., Appellants,

vs.

E. J. Haydel, Fred Schouest, L. R. Cabriac et al.

SPECIFICATION OF ASSIGNED ERRORS AS ARE INTENDED TO BE URGED.

The appellants, at the hearing of this cause, will present to the Court as grounds for review the following assigned errors:

(1) The Court erred in denying the appellants' application for an interlocutory injunction.

(2) The Court erred in recalling the temporary restraining order granted by E. R. Holmes, District Judge.

(3) The Court erred in not granting the interlocutory injunction to the appellants on the application therefor, and in holding that the appellants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said E. R. Holmes, District Judge.

(5) The Court erred in holding that the appellants were not entitled to the interlocutory injunction applied for.

In support of said assignments of error, the appellants will present to the Court, and rely upon for reversal of the decree appealed from, the points designated and printed in the record, Tr. 96.

No. 768

Foster Fountain Packing Company, Inc., and Sea Food Company, Appellants,

vs.

E. J. Haydel, Fred Schouest, L. B. Cabriac et al.

STATEMENT GROUNDS OF JURISDICTION

The original bill of complaint was filed in the district court of the United States for the eastern district of Louisiana, for the purpose of enjoining and restraining the defendants who are officers of the state of Louisiana, charged with the enforcement of Act 103 passed by the legislature of the state of Louisiana, approved July 8, 1926, hereinafter referred to as the "Shrimp Act," from enforcing the same, it being charged in the original bill of complaint that said act, as well as certain specific sections thereof, violated paragraph 3 subdivision 8 article 1 of the constitution of the United States, conferring upon Congress the exclusive power to regulate commerce; also paragraph 2 of article 6 providing that the constitution and laws of the United States shall be the supreme law of the land; article 1 of the fourteenth amendment to the constitution of the United States, providing that no state shall deprive any person of liberty or property without due process of law, nor deny to any person the equal protection of the laws. (Tr. 1-18).

The object of the suit was to enjoin the defendants who were charged under the act with its enforcement from arresting the complainants, their agents, servants, and employees, and from seizing and taking into custody and confiscating their boats and equipment used in transporting shrimp in interstate commerce from the state of Louisiana into the state of Mississippi.

A temporary restraining order was granted (Tr. 34). An application for interlocutory injunction was made, and a court composed of three judges, denied complainants' application for an interlocutory injunction pending the hearing, and recalling the temporary restraining order. This order was dated Dec. 27, 1927 (Tr. 138). A petition for appeal from said order was filed to this court, and decree signed by said three judges was granted allowing the same, upon the 3rd day of January, 1928 (Tr. 138-140).

The appeal was perfected and assignment of error filed (Tr. 140). Statement of points relied on for appellants will be found Tr. 146. This appeal is prosecuted from the decree of the three-judge court to this court under section 380 U. S. C. A., being section 266 Judicial Code, as amended Feb. 13, 1925. The material portion of the act being in the following language:

> "Par. 380 (Judicial Code, section 266, amended). Same; alleged unconstitutionality of State statutes; appeal to Supreme Court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either cir-

cuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

The following are pertinent authorities:

Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission, 260 U. S. 212, 67 L. ed. 217;
L. & N. Ry. Co. v. Garrett, 231 U. S. 298, 58 L. ed. 229.
Ex Parte Water Co., 220 U. S. 539, 55 L. ed. 575;
Raich v. Traux, 239 U. S. 33, 60 L. ed. 131;

Loone v. Crane, 245 U. S. 178, 62 L. ed. 230;
Pendergast v. Telephone Co., 262 U. S. 43, 67 L. ed. 853;
Van Dyke v. Geary, 244 U. S. 39, 61 L. ed. 973;
Oklahoma Natural Gas. Co. v. Russell, 261 U. S. 291, 67 L. ed. 659.

While the question is not necessarily involved on this appeal, the right of the three-judge court upon denying the application for an interlocutory injunction is an inherent power not dependent upon any rule or statute where it is necessary to prevent irreparable harm and injury to preserve the status pending the appeal. *Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission*, 260 U. S. 212, 67 L. ed. 217; *Terminal R. R. Ass'n v. U. S. of America*, 266 U. S. 17, 69 L. ed. 150; *Chicago Great Western Ry. Co. v. Kendall*, 266 U. S. 94, 69 L. ed. 183.

The three-judge court definitely adjudicated in this case that irreparable harm and injury would be sustained unless the restraining order was retained pending the appeal. The decree allowing the appeal contains the following language: (Tr. 139).

> "It is ordered, adjudged and decreed that said appeal be and is hereby allowed; and it appearing to the Court that the complainants will sustain irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and said restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court in the penal sum of $2,000.00 payable to the State of Louisiana, conditioned as provided by law."

No. 769.

I. O. Johnson, Jr., and Sea Food Company, Tanas Hebert et al., Appellants,

vs.

E. J. Haydel, Fred Schouest, L. R. Cabriac, et al.

STATEMENT GROUNDS OF JURISDICTION

The original bill of complaint alleged that the defendants are officers of the state of Louisiana, charged with the enforcement of Act 258 known as the "Oyster Act," passed by the legislature of the state of Louisiana, approved July 14, 1926. That the act was in conflict with the constitution of the United States in the several particulars set out in the bill of complaint, to-wit, the commerce clause of the constitution of the United States; also paragraph 2 article 6 of the constitution of the United States, providing that the constitution of the United States and the laws thereof should be the supreme law of the land; the fourteenth amendment to the constitution of the United States prohibiting any state from depriving any person of life or property without due process of law, and prohibiting a state from denying any person the equal protection of the law (Tr. 1-21).

A temporary restraining order was granted (Tr. 34); application made for interlocutory injunction (Tr. 36). A three-judge court, which was duly organized on the hearing of the application for the interlocutory injunction, denied the application and recalled the temporary restraining order (Tr. 90). This order was dated Jan. 26, 1928. Petition for appeal was filed; an order allowing appeal to this court was granted, and the status quo preserved pending the appeal. The order is dated Jan. 26, 1928, signed by the three judges (Tr. 91-92). The appeal was perfected; assignment of error will be found Tr. 93, and statement of points relied on by plaintiffs

in error will be found Tr. 96. This appeal is prosecuted from the decree of the three-judge court to this court under section 380 U. S. C. A., being section 266 Judicial Code as amended Feb. 13, 1925, the material portion of the act being in the following language:

> "Par. 380 (Judicial Code, section 266, amended). Same; alleged unconstitutionality of State statutes; appeal to Supreme Court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his asistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general

of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

The following are pertinent authorities:

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While the question is not necessarily involved on this appeal, the right of the three-judge court upon denying the application for an interlocutory injunction is an inherent power not dependent upon any rule or statute where it is necessary to prevent irreparable harm and injury to preserve the status pending the appeal. *Cum-*

berland Tel. & Tel. Co. v. Louisiana Public Service Commission, 260 U. S. 212, 67 L. ed. 217; *Terminal R. R. Assn. v. U. S. of America,* 266 U. S. 17, 69 L. ed. 150; *Chicago Great Western Ry Co. v Kendall,* 266 U. S. 94, 69 L. ed. 183.

The three-judge court definitely adjudicated in this case that irreparable harm and injury would be sustained unless the restraining order was retained pending appeal to this court. The decree allowing the appeal contains the following language:

> "and it appearing to the Court that the complainants will sustain irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from, withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court, in the penal sum of Ten Thousand Dollars payable to the State of Louisiana, conditioned as provided by law.
>
> "Ordered, adjudged and decreed, this the 26th day of Jan., 1928."

Foster-Fountain Packing Company Et Al.

v.

E. J. Haydel Et Al.

No. 768.

STATEMENT OF FACTS

This suit was begun in the United States District Court for the Eastern District at New Orleans, Louisiana, by Foster-Fountain & Company, Incorporated, a Louisiana corporation, and the Sea Food Company, a Mississippi corporation, by an original bill in equity filed in said court, wherein E. J. Haydel and several other adult defendants, all residents of the said Eastern District of Louisiana, were made defendants. (R. p. 1)

The defendants constitute the enforcement officers of the Louisiana Conservation Commission charged especially with the enforcement of the laws hereinafter complained of, and also the Attorney General, the District Attorney and Sheriffs of the Parishes of St. Bernard and Plaquemine in the state of Louisiana.

The bill of complaint which is found at pages 1 to 18 claimed the jurisdiction of a Court of Equity of the United States on account of threatened, irreparable harm, injury and damage and in a matter wherein the amount involved was over three thousand dollars and was a controversy arising over the Constitution and Laws of the United States, and specifically all that part of the constitution and laws of the United States as is set out in the bill of complaint on pages 2 and 3 of the Record.

It charged that sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of Act 103 passed by the Legislature of the State of Louisiana, and approved July 8th, 1926, are in con-

travention of the Constitution of the United States, and in support of this proposition set up: that the Sea Food Company is engaged in the catching, canning and packing of shrimp at Biloxi, Mississippi. The shrimp after being caught are sold in Interstate Commerce to all parts of the United States and are exported to England, France and Germany. That these shrimp are used as a food in all parts of the United States, their chief value arises after being packed and shipped in Interstate Commerce to all parts of the country where sea food cannot be obtained in the raw state. That this business is centered around Biloxi, there being over twenty plants engaged in the packing of shrimp at Biloxi, employing a thousand men and over three or four thousand women and children, there being dependent on this business over two thousand families, and the value of one hundred and sixty-six thousand cases of shrimp packed being worth approximately one million dollars. That on account of the peculiar situation of Biloxi with reference to topographical and climatic conditions, community life, etc., it is splendidly adapted to this industry, and that the Sea Food Company is one of the largest packing plants at Biloxi. (R. p. 5.)

That shrimp are a migratory fish, whose real home is unknown, they being found all over the waters of the Gulf of Mexico, and it being impossible to tell exactly where they breed, whether near the shore or outside waters, but it is known they are found in unlimited numbers in the waters of the State of Louisiana west of the channel of Pearl River. That this territory includes that part of the State of Louisiana which lies south of Orleans Parish and Lake Ponchatrain, west of Pearl River, north of Chandeleur Islands, and east of the Mississippi River, and embracing the Parishes of Plaquemine and St. Bernard. That these Parishes except for a small belt of high land along the bank of the Mississippi River are composed almost entirely of low marshes through which innumerable bayous, lakes and lagoons run. That the waters of the State of Mississippi, although ly-

ing adjacent to these waters, for reasons unknown to the complainant, are not the place of habitation of large quantities of shrimp, and for this reason the Sea Food Company and other persons are largely dependent upon shrimp caught from the waters of the State of Louisiana east of the Mississippi River.

That the common method of catching shrimp is for small boats equipped with trawls to go out into the marshes and into the Gulf of Mexico and by means of a net, called a trawl, to catch these shrimp, which are then sold or deposited upon a larger boat, which in turn takes the shrimp to Biloxi where they are cleaned, cooked and packed in cans and thereafter being shipped to all parts of the world. (R. p. 6-7). That in canning the shrimp only the tail is used, in most cases the heads and hulls of the shrimp being thrown into the waters, but that a small amount of the heads and hulls are dried producing what is called "Shrimp Bran," which is used to a small extent as a fertilizer. That the only plant in the State of Louisiana or Mississippi which uses the "shrimp bran" is located at Biloxi, Mississippi. That although the shrimp are caught in Louisiana, on account of the climatic conditions and other conditions prevailing in the eastern part of Louisiana, very few shrimp are canned in that territory.

That the Foster-Fountain Company is engaged in the catching and packing and canning of salt water shrimp. That it operates a hulling plant on the west bank of the Pearl River of the State of Louisiana, near Perlington, Mississippi, and has contracted to sell, transport and deliver to the complainant Sea Food Company during the packing season of 1927-1928 one car load of shrimp per month and to sell and convey to the Sea Food Company at Biloxi a certain number of barrels of shrimp per month. (R. p. 7.)

That the Sea Food Company and the Foster-Fountain Company have a large plant equipment of the approximate value of one hundred and fifty thousand dollars and employ a large number of men and women, and unless the supply of shrimp under the terms of the contract attached to the bill of complaint can be obtained its business will be destroyed, its plant rendered valueless and its employees thrown out of employment, and that the Foster-Fountain Company will acquire or catch strictly in accordance with the terms of the statute referred to in the bill of complaint shrimp to comply with said contract, and has already complied and is willing to comply therewith, the contract being attached to the bill of complaint as exhibit "A."

That the State of Louisiana threatens to interfere with the performance of this contract and to prosecute the Foster-Fountain Company, its agents, servants and employees and to seize and confiscate its property if it should perform its contract, and threatens to prosecute the Sea Food Company, its agents, servants and employees if it shall within the State of Louisiana accept compliance with any part of the contract. That the part of said Act complained of is as follows:

> "Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation

not domiciled in or incorporated under the laws of this State to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; any person, firm or corporation so violating the provisions of this Section shall be liable to the penalities hereinafter provided."

That Section 10 of said Act provides a license tax on seines and trawls; that Section 12 provides a severance tax on shrimp; that Section 13 of said Act is in the following language:

"Section 13. All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

In order that all of these inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portion of the abdomen popularly called tail meat of said

shrimp shall have been removed from the shell within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limits of the State, without restriction or reservation."

That Sections 14, 15 and 16 provide for taxes and licenses; that Section 19 provides certain penalities for a violation of said Act, said Section 19 being in words and figures as follows, to wit:

"Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any of the provisions of this Act, where a punishment has not been otherwise provided shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than twenty five dollars ($25.00) or not more than one hundred dollars ($100.00) for the first offense, nor less than one hundred dollars ($100.00) nor more than two hundred dollars ($200.00) for the second offense and for the third offense the fine shall not be less than one hundred dollars ($100.00) nor more than two hundred dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days, or may impose both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violation may be confiscated by order of the Court.

Vessels, their tackle and apparatus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken from the waters of this

State, shall be seized and taken in to possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred the Sheriff being authorized to permit the release of the said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction providing for the return of such vessel and its apparel and apparatus to abide the judgment of the court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of the sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the court of violating the provisions of this law prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1000.00) or to imprisonment of not less than six months (6) nor more than one Year and shall be liable to both fine and imprisonment in the discretion of the Court."

The bill of complaint shows that section 4 of the Acts violates the 14th Amendment of the Constitution of the United States, for the reason that while the Foster-Fountain Company operates a hulling plant in the State of Louisiana and is a corporation organized and domiciled in the State of Louisiana, it still is un-

able to catch shrimp from the waters of the State of Louisiana, because they do not operate a canning or packing property or drying platform in the State of Louisiana, that the right to catch shrimp in the waters of the State of Louisiana is given only to such corporations as own a canning or packing plant or drying platform in said State. That therefore the said complainants are denied the rights and immunities as citizens and the equal protection of the law and are deprived of their property without due process of law. That it would be a great hardship on the Foster-Fountain Company to operate a canning or packing plant in the State of Louisiana, and the same could only be operated at a great loss. (R. p. 12.)

Further, that Section 13 of the Act attempts to compel the Foster-Fountain Company to pack shrimp in Louisiana at a loss to themselves as a condition precedent to their making and filling contracts in Interstate Commerce, and further that the said law violates other sections of the constitution of the United States and the constitution of the State of Louisiana, as shown on p. 13 of the Record.

The bill of complaint further shows that only a negligible quantity of the hulls of shrimp to be conserved under the provisions of said Act are so conserved, and that this portion so conserved is made into "shrimp bran," a fertilizer which is shipped out of the State in Interstate Commerce, and that all of the tails of the shrimp are packed and shipped out of the State in Interstate Commerce, so that the only purpose of the Act is to compel the cleaning and canning of the shrimp in the State of Louisiana. That these shrimp are made the subject of barter and sale in the State of Louisiana, and that the complainant has an opportunity to purchase shrimp from citizens of the State of Louisiana who can lawfully acquire the same. That thereby the complainant can acquire a sufficient amount of shrimp to fulfill its contract and keep its plant in opera-

tion. (R. p. 15). But the officers of the State of Louisiana charged with the enforcement of this law are patrolling the waters of the State of Louisiana threatening to arrest any and all persons violating the said law and to seize and confiscate the boats of complainant if complainant endeavor to ship shrimp to its factory at Biloxi, Mississippi, and thereby complainants are unable to carry out their contract or to operate their business at a profit. (R. p. 15). That thereby the complainants are denied certain constitutional rights set out on pages 15 and 16 of the Record, and that the manner of the enforcement of the law is in contravention of certain sections of the constitution of the United States, shown at page 16 of the Record, for the reason that in the enforcement of the law persons residing in Louisiana who are engaged in shipping out what is known as raw shrimp do so with the full knowledge of the officers of the law charged with the enforcement of the Act, that those persons are shipping said shrimp out of the State for the purpose of being consumed in the raw state, and that the law is intended and sought and intended to be enforced against corporations like the complainant, packing or canning shrimp outside of the State of Louisiana, and is not intended to be enforced against persons shipping raw shrimp from the State of Louisiana in a headless condition for the purpose of being used in homes, restaurants, etc., and said persons are so violating said law with the knowledge of the enforcement officers of the State of Louisiana, its violation being permitted under the guise that these shrimp are caught without the jurisdicion of the State of Louisiana.

The bill of complaint further shows that the parties defendants are officers and agents for the Conservation Department of the State of Louisiana and the Parishes of St Bernard and Plaquemine charged with the enforcement of the general laws of the State of Louisiana, including the Attorney General of the State of Louisiana, and while denying that any part of the

law complained of is valid, complainants expressly offer to pay all taxes, licenses, whether severance taxes or otherwise, on shrimp caught by them, and generally offer to do equity as required by the court.

The bill concludes with the prayer that a temporary restraining order issue and that a Statutory Court of three Judges be formed, and that upon a hearing pending the final hearing a temporary injunction issue, and that upon the final hearing this injunction be made permanent, and for other and general relief fully set out and requested, as found on page 18 of the Record, which bill of complaint is duly signed by the solicitors of record and sworn to by the proper officers of both complainant companies, exhibiting as an exhibit thereto the contract and the full complete Act complained of, the contract being found at page 19 of the Record, and the law complained of being found at pages 20 to 34 of the Record.

The Presiding Judge of the Eastern District of the State of Louisiana being necessarily out of his jurisdiction, this bill of complaint was presented to the Honorable E. R. Holmes, who on the 6th day of September, 1927, granted a temporary restraining order and constituted a Statutory Court of three judges, composed of the Honorable Rufus E. Foster, Circuit Judge, Louis H. Burns, and E. R. Holmes, District Judges. (R. p. 34).

Thereafter a motion was made for a permanent injunction pending the hearing of this cause. (R. p. 36).

There was filed in opposition to the bill of complaint and motion a plea of estoppel, which set up that the parties had agreed to comply with the provisions of the law of the State of Louisiana complained of when they had obtained certain licenses requested from the State of Louisiana, which are all set out as exhibits to its plea of estoppel. (R. p. 38 to 53).

At the hearing of the motion for an injunction pending the final hearing of said cause, the complainants offered proof in the form of numerous affidavits substantiating fully each and every allegation of the bill of complaint, these affidavits being the affidavit of L. O. Johnson, Jr., and R. Hart Chinn (R. p. 54), affidavit of Louis Braun (R. p. 58), Tony Guerra and several other Louisiana fishermen (R. p. 60), affidavit of L. O. Johnson (R. p. 66), affidavit of R. H. Chinn (R. p. 67), affidavit of W. L. Guice (R. p. 69), affidavit of R. H. Chinn (R. p. 69), affidavit of L. O. Johnson (R. p. 71), affidavit of Ernest Desporte (R. p. 77), affidavit of O. G. Swetman (R. p. 83), affidavit of C. B. Foster (R. p. 85), affidavit of Victor Ellis (R. p. 86), affidavit of R. Hart Chinn (R. p 87), affidavit of Oscar Oliver (R. p. 94), affidavit of Lewis Garlotte (R. p. 95), affidavit of A. R. Heidenheim (R. p. 97), affidavit of L. G. Moore (R. p. 97), affidavit of E. C. Tonsmeire (R. p. 98), affidavit of Tony Williams (R. p. 100), affidavit of R. Hart Chinn (R. p. 101), affidavit of Alex Misticos (R. p. 103), affidavit of Alex Misticos (R. p. 104), affidavit of R. Hart Chinn (R. p. 104), affidavit of Donald W. Howe (R. p. 106), affidavit of L. J. Folse (R. p. 106), all of which affidavits taken as a whole show proof of the following facts:

That shrimp have been packed along the Mississippi Gulf Coast for about fifty years, this business having grown from a small beginning to the business of employing thousands of persons and brings in approximately one million dollars of wealth per year. That numerous fishermen of Louisiana and Mississippi catch raw products in the waters of Louisiana and bring the same into Biloxi for canning purposes. That in Biloxi are operated numerous canneries which are engaged in this business, a large number being operated by people who are citizens of the State of Louisiana, the reason for the canneries being located in Biloxi is that in the packing of shrimp it is necessary that a large and plentiful supply of pure water be had, that also decent and healthy

living conditions be had for those persons engaged in carrying on the business. That not only is pure water found in large quantities in Biloxi by having a large supply of artesian water, but the living conditions are such that numbers of persons are attracted there which furnish a large labor supply at any time needed, and that these persons have been engaged in such business for a long period of time, they have become expert and create an asset of great value to persons engaged in the operation of canning factories. That the opposite condition prevails in that portion of Louisiana which lies east of the Mississippi and west of Pearl River. That in this territory it is impossible to find a proper supply of pure water and a large labor supply is negligible and living conditions are such that it is impossible to get the required labor to live in this territory to successfully operate canning plants. That the shrimp after being caught are either shipped raw to different parts of the United States after the heads have been removed, or wholly cleaned by removing all of the heads and hides, and are cooked and placed in cans and shipped in Interstate Commerce to all parts of the United States. That very few of the shrimp are ever used for local consumption, and that the sole purpose of the catching of the shrimp is that the same shall be used in Interstate Commerce. That these shrimp are caught by citizens of Louisiana and Mississippi and are sold indiscriminately upon the open market that exists upon the waters of the State of Louisiana to the highest purchaser, and that by reason of the competition from factories in Mississippi the native catchers in Louisiana are able to secure higher prices for the product and for their labor than were this competition removed. That the sole purpose of the Act complained of would be to cause a removal of the factories situated at Biloxi to certain parts of Louisiana, where they would be compelled to operate at a great disadvantage and loss to themselves. That this loss could only be recouped by an addition to the price of shrimp which would be in effect a burden that would be felt in all parts of the United States in the price of shrimp

sold to consumers generally. That the requirements that the hulls and heads of the shrimp be conserved is simply a subterfuge to compel the packing of shrimp in Louisiana, for the reason that in most instances these hulls are not conserved but are thrown into the bays and bayous of the State and constitute a serious health menace in the localities where they are deposited. That while shrimp hulls have some small fertilizer value, its value is negligible, in fact the entire value for fertilizer purposes of shrimp hulls is less than one per cent of the value of the canned article packed in Louisiana and Mississippi, and although some small parts of these hulls and heads are steamed and baked and converted into "shrimp bran," that this "shrimp bran" is not used for fertilizer in the State of Louisiana in its natural state, it being disagreeable when used in its natural state, but is exported from the State of Louisiana to Biloxi where it is used as a component part of fertilizer by a firm manufacturing fertilizer at Biloxi. The proof further showed that numerous persons operating canning factories in Louisiana were unable to give away these heads and hulls and they constituted a serious menace to those persons engaged in this business. That all of the manufactured article, that is the tail of the shrimp, after being placed in cans, and the heads and hulls after being made into fertilizer were shipped in Interstate Commerce from Louisiana to other states and there was no pretense of the same being necessary or being used by the people of the State of Louisiana as a food supply. The proof further showed that boats of the Conservation Department of the State of Louisiana were patrolling the waters in Louisiana preventing any persons who desire to take shrimp from said waters to the State of Mississippi for the purpose of being cannned, but that although this rigorous enforcement was taking place on the waters of said state that large quantities of shrimp were being shipped from the State of Louisiana to other states of the Union to be used in the raw state, that is to be used in restaurants, hotels and homes for salads, etc. (See affidavit of L. J. Folse

R. p. 106). That this business had grown to be a considerable business and was increasing in size, the shrimp being shipped out in car load lots without any effort being made by the State officials of Louisiana to prevent the shipment. That although these shrimp were claimed to be from outside the waters of the State and without the purview of the Shrimp Act, that no such shrimp in the knowledge of ten Louisiana fishermen were being caught in the State of Louisiana. (See affidavit of Tony Guerra and others, p. 60 to 66 of Record).

That the amount involved in controversy was over three thousand dollars and that the contract set out in the bill of complaint had been duly and legally entered into between the parties, which contract was prevented from being carried out on account of the enforcement of the said law.

The proof further showed that the law was a subterfuge enacted from its inception simply for the purpose of compelling the removal of those persons engaged in the canning of shrimp from the State of Mississippi to the State of Louisiana, but although the complainant in this case, Foster-Fountain Company was a Louisiana corporation domiciled in Louisiana, that it was cheaper for it to engage in and operate its business in Biloxi than it would be to operate and engage in its business in the State of Louisiana, and for this reason Biloxi had been adopted as a point to operate its business. That this business could only be operated in Louisiana at a great loss to itself. (R. p. 59 and R. p. 54).

The proof is further overwhelming that the heads and hulls of the shrimp are almost valueless, and there is no denial that these heads and hulls are shipped out of the State in Interstate Commerce after being manufactured into "shrimp bran," and that any effort to comply with the law on the part of the complainants would entail a great loss upon themselves and would be a serious and direct burden upon Interstate Commerce.

In rebuttal of these affidavits, the defendants offered the affidavit of Stanley C. Arthur (R. p. 117) showing certain views he took of firms manufacturing "shrimp bran," and the affidavit of John Dymond, Jr., one of the attorneys for the defendant (R. p. 118) showing that certain agreements were entered into by persons supposed to represent the complainants when the Act complained of was passed by the Legislature of the State of Louisiana, and that factories could find sites in the Parishes of St. Bernard and Plaquemine, and that certain persons have acquired plants in Louisiana and that the complainants could acquire a plant in Louisiana; and also the affidavit of one Charles F. Greiner, (R. p. 124), who shows that in nine years he has manufactured twenty-six thousand dollars of "shrimp bran," all of which was shipped out of the State; the affidavit of one Raymond L. Colson, (R. p. 127), who shows that he purchased "shrimp bran" to the extent of thirty thousand dollars in one year, which bran was used by him in Mississippi in the manufacture of fertilizer. (R. p. 128); also the affidavit of James V. Dunbar (R. p. 129) which shows that in three years his company made $6,630.00 of shrimp bran, and that he has a canning plant at Biloxi which he is willing to move to Louisiana, and that the bran manufactured by him is shipped out of the State in Interstate Commerce; and also the affidavit of Dr. L. H. Jastremski (R. p. 131) which shows he manufactures and sells "shrimp bran." All of which affidavits fail to contain any material denial of the allegation that all of the component parts of the shrimp caught in Louisiana after being manufactured are shipped out of the State in Interstate Commerce or that this "shrimp bran" is of any value to the people of Louisiana as a food supply or fertilizer supply and is being conserved for their benefit or that the shrimp themselves are valuable to the people of the State of Louisiana as a food supply and is being conserved for their benefit, but these affidavits do show that shrimp can be caught and shipped from Louisiana in unlimited quantities and that the heads and hulls of these shrimp can be manufactured

into bran and shipped from Louisiana in unlimited quantities. That the sole benefit to be gained from enforcement of the act would be to compel the manufacture of these shrimp and this bran in Louisiana, nor is anything in the testimony produced by the defendant to show that there is any material effort being made by the State of Louisiana to prevent shipment by raw dealers of headless shrimp to all parts of the world, nor is there any denial in the affidavits that the attempt to ship these shrimp from the State of Louisiana to the State of Mississippi is being prevented and this section of the law is rigorously enforced. And we also call the Court's attention to the bill of complaint where an offer is made to return to the State of Louisiana by the complainant, at any point designated by the Conservation Commission, all heads and hulls of shrimp caught by the complainant.

After the final hearing was had by the Court, a decree was rendered without any written opinion by the Court or any finding of fact on the allegations of the bill of complaint denying the injunction and recalling the temporary restraining order (R. p. 138), but upon petition for appeal being presented to this Court (R. p. 138) such appeal to this court was allowed (R. p. 139) with a supersedeas from that part of the decree withdrawing the temporary restraining order, and assignment of error (R. p. 140) and bond required and decree allowing appeal having been filed (R. p. 141) this case is here on direct appeal from the decision of Statutory Court below refusing to grant the relief prayed for in the bill of complaint, that is, refusing to grant the temporary injunction prayed for therein.

No. 769.

L. O. Johnson, Jr., et al,

vs.

E. J. Haydel, et al.

STATEMENT OF FACTS

This is an original action begun in the District Court of the United States for the Eastern District of Louisiana by L. O. Johnson, an adult resident of Biloxi, Harrison County, Mississippi, and the Sea Food Company, a Louisiana corporation, organized under the laws of the State of Louisiana and domiciled and having an office and place of business in the City of New Orleans, Louisiana. The bill made defendants Louis A. Mereaux, Sheriff of St. Bernard Parish in the State of Louisiana and certain other officials and citizens of Louisiana, all residents of said Eastern District, as will appear by the bill of complaint naming said defendants found of record on p. 1, all of said defendants being charged with the enforcement of the law complained of and generally with the enforcement of all the laws of the State of Louisiana.

The bill of complaint begun on the Equity side of said court claimed that the complainants were threatened with irreparable injury and harm and were without adequate remedy except in a court of equity for the purpose of preventing said harm as well as for the purpose of preventing a multiplicity of suits and sought an injunction and other equitable relief. The bill set up that the amount involved exceeded the sum of three thousand dollars exclusive of interest and costs, in that the complainants had entered into a contract for the purpose of the purchase and sale of oysters in shell valued greatly in excess of three thousand dollars and that they would be prevented from complying with this contract unless

the relief prayed for was obtained, and that unless such relief was obtained loss and inconvenience, etc., sustained by them would be greatly in excess of three thousand dollars.

The bill further alleged that there was a controversy between the parties complainant and defendant arising over the constitution and laws of the United States, in that the complainants claimed that sections 1, 2, 3, 4, 23 and 24 of Act 258 passed by the Legislature of the State of Louisiana, approved July 14th, 1926, and appearing in the public acts of the State of Louisiana, a copy of which being attached to the bill marked Exhibit "A," violated and are in contravention of paragraph 3, subdivision 8, article 1, of the constitution of the United States, and paragraph 2, article 6, of the constitution of the United States, and article 1 of the 14th amendment to the constitution of the United States, and article 1, section 10, of the constitution of the United States, and certain sections of the constitution of the State of Louisiana set out on pages 3 and 4 of the record.

The bill further alleges that the Sea Food Company was incorporated under the laws of the State of Louisiana for the following purposes:

> "The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinabove set forth or contemplated by this charter."

The whole of the charter being attached to the bill of complaint and being marked Exhibit "B."

And, further, that the said Sea Food Company has and maintains an office in the City of New Orleans, State of Louisiana, and is engaged in the oyster business at Biloxi, Harrison County, Mississippi and in the wholesale raw oyster business in the State of Mississippi and other states in the Union and generally engaged in the packing and canning and manufacturing of oysters and other by-products and shipping and selling of same in Interstate Commerce throughout the United States and foreign countires, and that the defendant L. O. Johnson is engaged in a similar business with an oyster packing plant at Biloxi with schooners and other equipment necessary to catch such oysters, the total value of said business being at least seventy five thousand dollars. (R. p. 5).

The bill of complaint further shows a history of the oyster business, that is, that this business in so far as it applies to the Gulf Coast of Mississippi and Louisiana originated by virtue of the establishment along the Gulf Coast by citizens of Maryland of canneries for the packing of oysters for shipment throughout the States of the United States. That since its establishment over fifty years ago a number of factories have sprung up in Biloxi, and Biloxi has become the center of the Southern oyster packing industry, and not only are a large quantity of oysters packed there annually but almost all of the factories in Louisiana and Mississippi now established were established by people who learned the oyster business at Biloxi. The bill further shows that the reason of the selection of Biloxi as a point of manufacturing of oysters is a physical and economical reason, in that while the State of Louisiana and other States adjacent to the State of Mississippi have a large supply of natural reefs on which oysters are grown, still these reefs are situated in the midst of a low line marshy country with poor water supply and very little of the skilled labor necessary to properly pack and can oysters, whereas Biloxi is situated on a high dry area of land enjoying a very healthy, salubrious climate, as well as an excellent water supply

and a large and expert labor supply, all of which is necessary in the packing of oysters, and, furthermore, in Louisiana no high land is found except along the banks of the Mississippi River and the way from these banks to the oyster catching region is through narrow canals, most of them privately owned. In the case of Biloxi there is a wide expanse of peaceful waters from the oyster catching regions to Biloxi, which waters do not exceed over forty miles in distance and can be traversed shortly and without interference from the private owners of any of the canals, etc. (R. p. 6). The bill further sets out the manner and method of carrying on this business, in that it is carried on by means of power boats or schooners which leave from Biloxi going into the Mississippi Sound or Louisiana marsh and dredging these oysters up by means of oyster dredges, dredging along side of the boats, or by means of tongs used from the sides of the boats or skiffs. It further shows the way in which oysters are brought into the factory and the manner and method used in and about the steaming and preparation of these oysters for canning and shipment. (R. p. 6). The bill further shows that the oysters are canned and are then shipped to all parts of the world. (R. p. 7). That while oysters are found all over the world that the largest amount of commercial oysters for canning purposes are found from Delaware to Texas in the United States of America. (R. p. 7). After going thoroughly into the whole oyster industry both with reference to the canned article as well as to the raw oysters used in shipment in its raw state to different parts of the United States (R. p. 7), the bill further shows that most of the oysters canned in Biloxi are received from that part of Louisiana lying east of the Mississippi River and north and west of the Gulf of Mexico and south of the Parish of Orleans in the State of Louisiana. That this land constitutes an area of about thirty miles wide and meanders with the shore line a distance of approximately ninety miles, and in it are situated hundreds of bays, bayous and inlets, all of which have been found agreeable to the cultivation of oysters and have been worked for this purpose for

years but still contain an inexhaustible supply of oysters which would become rank and worthless in their natural state unless yearly worked for commercial purposes. (R. p. 7). That while this territory is capable of yielding thousands of barrels of oysters per day, in the whole territory above described in the State of Louisiana there are only two small factories working, which factories under no circumstances could use over one thousand barrels of oysters per day. (R. p. 8). The bill further alleged that the oyster supply of Louisiana had been so plentiful that although the Louisiana government had created a conservation department that no steps had been taken by this department to artificially replenish the stock of oysters, except that they had watched the culling and catching of oysters but that no oysters had been planted by them. (R. p. 8). That by far the largest amount of the oyster industry in Louisiana was centered west of the Mississippi River, that being the neighborhood in which the raw oyster industry in Louisiana was carried on by persons who grow oysters for the market and by persons who would catch and either ship or can oysters that came from the bayous and inlets lying about fifty or one hundred miles west of the Mississippi River, and centered around Houma and Morgan City, Louisiana. (R. p. 8).

The bill further shows that the Sea Food Company was engaged in the business of canning and packing oysters but did not have a canning and shucking plant in the State of Louisiana, and that on the 12th day of Jaunary, 1928, the Sea Food Company agreed to deliver to L. O Johnson, Jr., during the year 1928 one thousand barrels of oysters in the shell per day. That it was necessary in order that the Sea Food Company could carry out this contract that the Sea Food Company either catch or purchase oysters in the State of Louisiana and transport same from the State of Louisiana to L. O. Johnson, Jr., in the State of Mississippi, it being necessary for L. O. Johnson, Jr., to have these oysters in order that he might supply the demands of his business in Interstate and foreign commerce, and in order

that he might keep his plant in operation at Biloxi, Mississippi, in which plant he had an investment of approximately seventy-five thousand dollars, and employed a large number of men, women and children, and that unless the Sea Food Company was able to secure such supply of oysters in order to fill said contract that the business of L. O. Johnson, Jr., would be destroyed, his plant rendered valueless and its employees thrown out of employment. (R. p. 9). That the Sea Food Company desires to obtain said oysters in the shell either by taking the same from the Parishes of Louisiana described in the bill of complaint, or by purchasing the same from some person, firm or corporation who has lawfully acquired possession of same with the right of sale. That the existence of its business depended upon its ability to carry out its contract, and it is ready, able and willing to comply thereof, the contract being attached to the bill of complaint as Exhibit "C." (R. p. 10).

The complainant set up that at its 1926 session the Legislature of the State of Louisiana passed and there was approved an Act of said Legislature known as Act 258 of 1926. That sections 2 and 3 and 23 and 24 of this Act are as follows:

> "Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State, to any firm or association composed of citizens or residents of this state, or to any corporation domiciled in, or organized under the laws of this State, having their factory or shucking plant or places of business located within the State, upon the terms and conditions and subject to the restrictions and regulations herein set forth, or under the authority of which may be imposed

by the Department of Conservation of this State. No person, firm, association or corporation, not a resident or domiciled in this State, is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for the cultivation and propagation of oysters for any of the above purposes. Any persons, firm, association or corporation, violating any of these provisions of the section shall be liable to the penalties hereinafter proivded. Any person, firm, or corporation, properly licensed to operate in the oyster industry in this State shall be permitted to employ such labor, resident or non-resident, as may be required and to employ such vessels and their crew, resident or non-resident, as may be required upon said vessels being properly licensed as herein otherwise provided. This right to employ such non-resident labor or non-resident vessels shall be confined to the operation of any licensees as carried on within the State of Louisiana.

"Section 3. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as cultch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw oyster shells beyond the foregoing requirements may be used for the road building purposes, or ground for use as chicken feed or fertilizer, or any other purposes of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food products it shall be

lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified interest or property in the oysters so taken in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restricions or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In the case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larcency or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon bedding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

That Section 23 and 24 of said Act or as follows:

"Section 23. Vessels, their tackle and apparatus, used in the illegal taking of oysters from the waters of this State shall be seized and taken into possession by the officers and inspectors of the Department of Conservation charged with the enforcement of the conservation laws, and shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred, the Sheriff being authorized to permit of the release of said vessel, or of said vessel and cargo, from seizure upon the owner thereof furnishing bond with good and solvent surety or sureties, satisfactory to the Judge of the District Court having jurisdiction, in double the value of the vessel, its tackle and apparatus, and cargo, if any, seized, providing for the return of such vessel, its tackle and apparatus, in good condition to abide the judgment of the Court.

"Such vessel shall be liable to forfeiture upon proceedings to that end being instituted in the name of the Department of Conservation by petition in an ordinary suit setting forth the cause of action and praying for the forfeiture of said vessel, its tackle and apparatus, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel, with its apparel and apparatus, whereupon said vessel, with its apparel and apparatus, shall be sold at public auction by the Sheriff having jurisdiction, and the proceeds of sale of said vessel, its apparel and apparatus, less the costs of the seizure and of the proceedings, and of the keeping and sale of said vessel shall be paid into the State Treasury, to the credit of the Department of Conservation.

"The cargo of the seized vessel, if perishable, shall be sold at once by the Sheriff, or the seizing officer, to the best advantage, and the proceeds of the sale disposed of in the same manner as the proceeds from the sale of seized vessels.

"Should the owner of the seized vessel be able to prove to the satisfaction of the Court before which the case is tried that the captain, and crew, of said vessel had agreed in writing to comply with the provisions of Section 18 of this Act in every particular, and that it was not the intention of said owner to permit or allow any infraction of said provisions of the law, then, and in that event, the owner of said vessel shall be held blameless, the vessel released from seizure upon the payment of all costs, and the captain, person, agent, officer, crew or members thereof of said vessel, or by whom, or under whose direction said vessel was used in the illegal taking of said oysters in violation of Section 18 of this Act shall be adjudged guilty of violating the provisions of said section, and shall be sentenced to imprisonment in the parish jail for not less than ninety (90) days, nor more than two (2) years, in the discretion of the Court.

"Section 24. That any person, firm or corporation, or common carrier, their agents, and officers violating any of the provisions of this Act, where a punishment has not been otherwise provided shall be guilty of a misdemeanor and shall upon conviction thereof pay all costs of the prosecution, and be fined not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00), or be imprisoned in the parish jail for not less than ninety (90) days, nor more than two (2) years, or both fined and imprisoned at the discretion of the Court, for each offense.

"Upon a second conviction of any person, firm or corporation, or common carrier, their agents and officers, for violating any provisions of this Act, where a punishment has not been otherwise provided, all licenses issued to such person, firm or corporation, hereunder, shall be forfeited, and it shall

be the duty of the Judge of the District Court before whom such trial shall be had to declare and order such forfeiture as a part of his sentence."

The bill of complaint further stated that under the provisions of said Act that unless restrained from so doing the complainant would not only be prevented from catching any oysters and exporting same in the shell from the State of Louisiana, but if it should acquire the oysters on the shell from any person, firm or corporation having the right to take same from the waters of the State and should attempt to transport them to the State of Mississippi for the purpose of complying with the contract set out in the bill of complaint that it will be prosecuted and its vessels and property seized for confiscation and its servants and employees and agents will be prosecuted by the defendant herein, that the penalties were very severe and that the employees for each separate offense would be annoyed, troubled, harassed and would be prevented from carrying out said contract. (R. P. 14). That each of the sections of the Act complained of violate the 14th Amendment to the Constitution of the United States, for the reason that while the Sea Food Company is forbidden from taking oysters from the territory referred to in the bill of complaint unless it shall have and maintain a packing plant in the State of Louisiana, that any individual who may be a resident of the State of Louisiana for however short a time is granted this right, and any corporation organized under the laws of the State of Louisiana maintaining such a plant as is referred to in the said Act set out in the bill of complaint may exercise such right, thereby denying to complainants the rights and immunities of citizens and further depriving it of its property without due process of law. (R. p. 15).

That the complainant Sea Food Company could only operate a canning plant in the State of Louisiana at a great loss and that enforcement of this law would compel

it to pack and can oysters in the State of Louisiana at a great and serious loss to itself as a condition precedent to its making and complying with the contract made and entered into in Interstate Commerce, wherefore, all of the sections of said Act herein referred to are repugnant to the constitution of the United States, in that such sections directly burden Interstate Commerce. (R. p. 15).

Complainant further shows that the Act specially permits and authorizes oysters in the shell to become the subject of barter, sale and trade and to become an article of Interstate Commerce and permits the complainant and each of them to acquire the same in the State of Louisiana, but because the Act forbids the shipment of the same by complainants or either of them from the State of Louisiana to the State of Mississippi that the said Act violates the 14th Amendment to the Constitution of the United States, in that they are forbidden from shipping the same out in the shells.

Complainant further shows to the court in the bill of complaint that the Act was not passed to conserve the natural resources of the State of Louisiana, because the Act expressly permits the natural resources of the State, to-wit, the oyster and the hulls to become the subject of barter and commerce and to pass from the State of Louisiana in unlimited quantities, but the only effect and purpose of this Act is to acquire the packing and manufacturing of these oysters in Louisiana, which requirement has no relation to a proper exercise of the police power of the State of Louisiana or has any relation to the conservation of the natural resources of the State, and was not passed for the purpose of conserving to the people of the State of Louisiana the oyster shells or any portion thereof, but said Act was passed with the object and purpose and view of the oysters as well as the shells being treated as a subject of Interstate Commerce, but Interstate Commerce is directly burdened therein, in that the effect of said Act complained of in the bill of

complaint is to compel and require that oysters be canned and packed in Louisiana before passing into Interstate Commerce, thus directly burdening such commerce.

That section 2 and 3 of the Act are unreasonable, unlawful and arbitrary and were passed only for the purpose of requiring canning and packing of oysters in the State of Louisiana. (R. p. 16-17).

The bill of complaint further shows that only a negligible quantity of shells of the oysters have been and are now used in the manufacture of fertilizer, or chicken feed in the State of Louisiana, but such parts that are manufactured is shipped out of the State as Interstate Commerce. That therefore the purpose of said Act is a pure subterfuge without any intention of conserving for the benefit of the people of the State of Louisiana any food supply or natural resources of the State, but is a pretense for the purpose of burdening Interstate Commerce by compelling oysters to be canned in the State of Louisiana.

The bill further shows that the section complained of in said Act violates the 14th amendment to the constitution of the United States, as well as Section 2, article 1 of the bill of rights of the State of Louisiana, for the reason that in the enforcement of this law, firms, persons and corporations in the State of Louisiana are daily shipping out in Interstate Commerce large quantities of oysters in the shell, which are shipped in barrels and sacks and with full knowledge of the officers of the law charged with the enforcement of the Act. That the statute complained by this construction placed thereon by the officers charged with the enforcement is that the system is applicable only to oysters going out of the State for the purpose of being canned or packed outside of the State. That persons, firms and corporations in the State of Mississippi are daily taking out large quantities of oysters for commercial purposes. (R. p. 18).

The bill of complaint further alleged that the charter granted the Sea Food Company, and which is annexed to the bill of complaint, constitutes a contract between the Sea Food Company and the State of Louisiana, and therefore the sections of the Act and each of them referred to have the purpose of depriving the Sea Food Company of rights granted to it by its charter, for the reason that said sections and each of them violate Section 10, Article 1, of the Constitution of the United States, prohibiting a State from passing any law impairing the obligation of contracts. (R. p. 18-19).

That the defendant, the Sheriff of St. Bernard Parish and the other defendants named in the bill of complaint are charged under the laws of the State of Louisiana with the duty of the enforcement of said Act, and that although the complainants have offered to pay all licenses and charges required by the Conservation Department of the State of Louisiana for license to take oysters from the reefs of said State in the Parishes named in the bill of complaint, and offer in the bill of complaint to pay all severance taxes, license taxes and other taxes imposed by such Act or any section thereof, that the officers referred to in the bill of complaint will promptly under the provisions of said Act interfere with the Sea Food Company in its carrying out of the contract, by transporting oysters from the State of Louisiana in the shell caught or bought by it in said State by arresting its servants, agents and officers and by confiscating and forfeiting its vessels, equipment and property, and that therefore they are prevented in carrying out a contract in Interstate Commerce and immediate and irreparable loss and damage has resulted and will continue to result to each by reason of the unlawful acts and conduct of the defendants, who are proceeding to act and who will act and continue to act in and by virtue of the terms of the Act set out in the bill of complaint. (R. p. 20). That while the whole Act complained of and all of the taxes and licenses thereunder levied are un-

constitutional and violate the Commerce Clause of the constitution of the United States and other property sections and clauses set out in the bill of complaint, they offer to pay such taxes and charges as a condition precedent to the right of complainant to take and ship oysters from that portion of the State of Louisiana referred to in the said bill, and in all other things offer to equity in the premises. (R. p. 20).

Annexed to this bill of complaint and an exhibit thereto is a Charter of the Sea Food Company, (R. p. 22). The contract entered into between L. O. Johnson, Jr., and the Sea Food Company is also annexed and made an exhibit to the bill. (R. p. 25).

The bill of complaint was duly sworn to by A. R. Heidenheim and L. O. Johnson, Jr., representing the parties complainant. The prayer of the bill of complaint being that a temporary restraining order issue from the District Court restraining the defendants from enforcement of the Act complained of. That a hearing be had before three Judges as provided by Act of Congres and a temporary injunction issue thereon, and that upon final hearing hereof the temporary injunction be made permanent, and for general relief.

This bill being presented to the Honorable Louis H. Burns, Judge of the said Eastern District of Louisiana, an order to show cause was issued and assigning this cause to be heard on the 26th day of January, 1928, at New Orleans, Louisiana, before Honorable Rufus E. Foster, United States Circuit Judge, Honorable E. R. Holmes and Honorable Louis H. Burns, District Court Judge, composing a Court of three Judges as required by the statutes of the United States. (R. p. 28). And at the same time Judge Burns granted a temporary restraining order restraining and enjoining the defendants and each of them from attempting to enforce the pro-

visions of said Act pending the hearing by the statutory court created on the motion for a temoprary injunction in accordance with the prayer of the bill of complaint. (R. p. 34-35).

Before the hearing of the motion for a temporary injunction was had, two citizens of the State of Louisiana, Tanos Herbert and Charles Bordeau filed a petition of intervention. (R. p. 29). In this petition of intervention they set out they were citizens of the State of Louisiana, employed at Biloxi, Mississippi, and represented a class of over one thousand of such citizens who were working at Biloxi. That they adopted all of the allegations of the bill complained. Further show that they and their fore-parents for over a hundred years had lived, resided and worked in the State of Louisiana, but that due to the failure of the cane crop for several years they were deprived of their means of earning a livelihood, and knowing no work other than cane work and work about oyster factories had endeavored to secure such work in the State of Louisiana, but failing to do so had been compelled to remove to Biloxi, Mississippi, where they were living and working pending an improvement in cane business which would permit of their return to the State of Louisiana. (R. p. 30). That petitioners were working for the Sea Food Company in Biloxi, and that unless the contract entered into between the Sea Food Company and L. O. Johnson could be carried out by said parties they would be deprived of their means of earning a livelihood and deprived of their right to catch oysters in the State of Louisiana, which right was granted them as citizens and which right was an unalienable right vested in every citizen of the State of Louisiana to take these oysters and fish from the waters of the State of Louisiana. (R. p. 32). That while this right was denied to the petitioners that other more favored citizens of Louisiana were being allowed to ship raw oysters in the shell from the State to points outside of the State for the purpose of being used in restaurants,

dining cars and lunch stands and the law as it is being administered discriminates against petitioners and denies to petitioners the equal protection afforded by the laws of the State of Louisiana to other citizens, and praying they be allowed to join in the bill of complaint on behalf of themselves as well as the class they represented and for the right to adopt the original bill of complaint as their bill of complaint, and that the preliminary restraining order be extended to them and all of their class working on boats in Biloxi operated by complainants and to all the class they represent, and generally praying for all the relief that could be afforded in a court of equity against the enforcement of the law complained of and for general relief. (R. p. 33).

An order was entered by the three Judges constituting the Statutory Court allowing these persons to become parties complainants and giving to them all rights of a party complainant including the benefits of the restraining order issued upon the original bill of complaint. (R. p. 34).

Thereupon the complainants moved for an interlocutory injunction. (R. p. 36). Thereafter there was filed an Answer and Exception of the defendants. (R. p. 36). Which Exception denied the right of complainants for any relief, for the reason that the waters of the State of Louisiana belong to the State, and for other reasons set out in the Exceptions found at page 37 of the Record, and one of which reasons was that the State of Louisiana in its sovereign capacity retains title in the oysters caught upon its bottoms until each and every condition attached to the divesting of the title of the State in said oysters has been removed in compliance with the provisions of its laws.

At the hearing before the Statutory Court created under the provisions of the Statute of the United States much proof was offered by the complainants in support

of the averments of the bill of complaint, which proof consisted of the affidavits of numerous persons found in the Record.

This proof was in substance as follows: That the oyster reefs of the State of Louisiana are of such immense size that the working same for commercial purposes did not effect their value or area and the only danger to these oysters is allowing them to remain unworked, thereby so increasing the growth of oysters that the oysters die of their own volition. (R. p. 76). And in the State of Louisiana there are millions of barrels of these oysters which have died and now forming dead oyster reefs, the shells of which are used for building roads and for ballast on railroads. That these shells can be removed by any person resident or non-resident of the State of Louisiana in unlimited quantities, and at this time they are being bought and removed out of the State of Louisiana for road building purposes, yielding to the State of Louisiana the small price of two cents per cubic yard, which is less than one-tenth of the amount which would be yielded from the tax on the live oyster alone. (R. p. 77). That during the past sixty years there has been built up in Biloxi a great industry in the packing and shipment of oysters and during this time these oysters have been obtained from Louisiana to such an extent that various citizens of Louisiana have come to Biloxi and built their factories in Biloxi. (R. p. 77) That at the same time hundreds of natives of Louisiana temporarily reside at Biloxi working around these factories. That very few of the oysters caught in the eastern part of Louisiana are canned within that area, there not being over one thousand barrels of oysters canned per day, whereas the yield of oysters east of the Mississippi River is between five and ten thousand barrels per day without the possibility of any danger to the oysters. (R. p. 76). That the reason why the oysters cannot be successfully canned in Louisiana east of the river is, that it is almost impossible to obtain proper sites to pack oysters

in Louisiana on account of the distance from the banks of the main stream of the Mississippi River to the place where the oysters are caught and no proper supply of pure water can be had. (R. p. 78). That oysters in Louisiana have been regarded as a commodity saleable on the open market, and the sole purpose of catching these oysters from time the fisherman goes into the marsh after the oysters was either to sell them or to ship them out of the State or sell them to factories located in the State for the purpose of being canned and thereafter to be shipped out of the State, very few oysters being required by local citizens of the State, and over nine-tenths of the oysters used by citizens of the State having been grown on private beds and all of the marsh oysters having been sold and exported from the State. (R. p. 78). That the law complained of is enforced only in reference to oysters packed or canned and not to conserve the oyster supply in Louisiana. That this purpose was so stated when the passage of the law was being sought at Baton Rouge, and that the law is being so enforced that oysters in increasing quantities are being shipped out of the State in the shell as raw oysters to be used by restaurants and raw dealers throughout the United States. R. p. 79). That the suply of oyster shells in Louisiana is so great that very few persons engaged in the oyster business pay any attention to the shells, these shells being in many instances dumped into the bayous of the State. (R. p. 79).

There was further introduced the following affidavits to show that oysters in the shell can not only be bought in unlimited quantities in the State of Louisiana, but no attention is paid by officers of Louisiana with reference to the enforcement of the Act against those persons shipping oysters from the State other than for canning purposes. In support of this contention complaint introduced the affidavit of Ernest Desporte, Jr., (R. p. 28), affidavit of Louis Braun (R. p. 44), affidavit of L. O. Johnson, Jr., (R. p. 49), affidavit of Theodore

Grillis (R. p. 52), affidavit of Dominick Caravella (R. p. 54), affidavit of B. C. Young (R. p. 55), affidavit of Pete Messina (R. p. 56), affidavit of Charlie Chagare (R. p. 58), affidavit of K. Joseph (R. p. 58), affidavit of E. J. Misticos (R. p. 59), affidavit of D. J. Goodin (R. p. 61). This last mentioned affidavit shows that this man had spent over two weeks in New Orleans and had gone to all of the numerous plants in New Orleans where raw oysters were sold in the shell, had seen these oysters shipped from New Orleans to all parts of the United States in their raw state, being shipped out of New Orleans on dining cars for the purpose of being eaten by the patrons of said cars, had purchased said oysters and had himself shipped them out of the State, and made inquiries of persons engaged in this business and was assured by them that not only would they take his orders for shipment out of the State but that orders in unlimited quantities for shipment out of the State would be filled by them. That during his entire time and experience in New Orleans, during which time he had called upon all of the persons engaged in this business and had made purchases from them, that he found absolutely no restriction placed by the enforcement officers of the State of Louisiana upon the carrying on of this traffic of oysters in the shell, and that he was informed by persons affected thereby that there was no enforcement through the Conservation Department in the conduct of its business. This affidavit was corroborated by the affidavit of J. R. McKinnon, found on page 72 of the Record, who saw oysters shipped in the shell from Louisiana and was quoted prices on oysters by all persons engaged in the raw oyster business in New Orleans, and that he saw no evidence whatever of the inspection of this business by the State officers of Louisiana. That although he carefully questioned the various persons engaged in this business he was unable to ascertain if any effort was made by the officers of Louisiana to prevent the shipment of raw oysters in the shell from Louisiana. That this business was a large business and was constantly

increasing and was in direct competition with the business of the complainants in the bill of complaint. (R. p. 73-74). This is corroborated by the affidavit of Henry Weidmann (R. p. 74). There being attached to these affidavits various exhibits showing the barrels in which the oysters were shipped, the bills of lading for the oysters, the bills or invoices for the oysters, and places in which they were being sold all over the States of Louisiana, Arkansas and Tennessee.

The record further discloses (at page 42) that the damages that would be suffered by the complainants would be in excess of three thousand dollars, and that an attempt has been made by the Sea Food Company to comply with all of the taxing features of the statutes complained of; that the Sea Food Company is domiciled in New Orleans and that the charter attached to the bill of complaint is the charter under which the said Company is operating, and that the contract entered into between the parties and attached to the bill of complaint as an exhibit is a valid legal obligation upon the parties. (R. p. 41-42). That sufficient oysters can be bought in the State of Louisiana in the public markets to carry out the terms of this contract, but that the contract cannot be carried out in Louisiana nor can oysters be successfully canned in Louisiana for the reason that factory sites in Louisiana can only be reached through bayous and canals owned by private individuals and that sufficient expert labor cannot be secured in quantities that would enable a factory to successfully operate, (R. p. 43) and that oysters could only be canned by the complainants in the State of Louisiana at a very great loss involving thousands of dollars. (R. p. 43). That in the whole district complained of in the State of Louisiana there are only two canneries, both of which are located at the head of private canals, and that there is no present need of oyster shells for chicken grit or fertilizer, as the State of Louisiana has numerous reefs of dead oyster shells where millions of barrels of shells can be cheaply obtained (R. p. 44).

In addition to all of the affidavits hereinbefore referred to there was filed the affidavit of Louis Braun (R. p. 44), the affidavit of R. H. Chinn (R. p. 45), affidavit of L. O. Johnson, Jr., (R. p. 49), affidavit of B. O. Gunn, (R. p. 70), affidavit of C. B. Foster (R. p. 76), affidavit of B. Taltavull (R. p. 80), all of which affidavits offered proof of each and every fact set out and alleged in the bill of complaint, and showed conclusively that not only did Louisiana possess a vast source of supply of raw oysters, but that absolutely no limit was being placed by the State of Louisiana on the catch of these oysters, nor was there any limit placed by the State of Louisiana on the shipment of these oysters in the raw shell other than for the purpose of canning purposes, and that after the oysters were canned in Louisiana there was no limit placed upon the shipment of the canned article from the State or upon the shipment of fertilizer and chicken feed, this being the by-product of the oyster shell, from the State. That all of these by-products were shipped from the State, and that although the strictest watch was kept by the State of Louisiana upon those persons desiring to take oysters from said State to the State of Mississippi for canning purposes, that absolutely no attention was given by the enforcement officers of said State to the operation of business of those persons engaged in shipping raw oysters in the shell for use in the raw state in restaurants, dining cars, etc., of other States of the Union. That the sole purpose of the Act was not to conserve any of the natural resources of the State as a food supply for the people of the State or as a fertilizer or chicken feed supply for the people of the State of Louisiana, but its only purpose and the underlying motive for the Act was to compel those persons engaged in the packing of oysters in Biloxi and other parts of Mississippi to remove their factories to the State of Louisiana so that the State of Louisiana might benefit from the operation of factories in that State. That although he factories could be moved to the State of Louisiana and some of the fac-

tories would be able to find locations in the State of Louisiana, this could only be done at a great and unnecessary expense in the operation of its business and it would cost the factories involved great sums of money in excess of the money now being spent in the operation of their business to successfully operate in the State of Louisiana. That this added cost would be felt in the price of oysters, all of which are used in Interstate Commerce. See the affidavit of R. H. Chinn, (R. p. 45), affidavit of Louis Braun (R. p. 43), affidavit of A. R. Heidenheim (R. p. 41).

In opposition to the testimony herein above described which was presented to the court by the complainant, the defendants introduced three affidavits, first, that of George Birrell (R. p. 85), which affirmed that in certain parts of the State of Louisiana the oyster supply was very small on account of certain crevasses that had occurred in this part of the State, and that if the Mississippi fishermen were allowed to fish in this part of the State the entire supply of oysters would be depleted in about thirty days. The affidavit of Dr. V. K. Irion (p. 86 of Record) shows that the oyster shells gathered from the waters of the State are being used in shell crushing factories making chicken feed and for road building and ballast purposes, and that this affiant who is at the head of the Conservation Department, knows nothing about the shipment of raw oysters in the shell from the State. The third affidavit is that of James N. McConnell (p. 87 of Record), who states that the oyster factories of Mississippi can acquire suitable sites in Louisiana, and that the oyster shells are being used to make chicken feed and for road building purposes, and that as far as affiant knows that no oysters are being shipped out of the State of Louisiana in the shell in violation of the oyster law, the affiant being one of those persons charged with the enforcement of this law. There were no facts presented that any of the shells were used as cultch, this being the purpose set out in the Act

for which the shells would be valuable, and no inspectors were maintained at the place of business of those engaged in the raw oyster business, nor was there any danger of the oyster reefs of Louisiana being depleted, except the affidavit of Birrell, hereinabove referred to, nor was there any restriction placed upon the amount of oysters that could be caught and canned in the State of Louisiana and thereafter shipped out of the State of Louisiana in cans, nor was there any restriction placed on the amount of oyster shells that could be ground into chicken feed and ballast and shipped in that condition from the State of Louisiana. There was no denial that oysters were commonly regarded as an article of commerce, and that the sole purpose of the catching and canning of these oysters was to inject same into Interstate Commerce, nor was there any denial that the law was being and would be rigidly enforced against the complainants, nor was there any denial of any other material fact set out in the bill of complaint.

After the hearing a decree was rendered by the Statutory Court recalling the temporary restraining order (R. p. 90), and thereafter a petition for appeal was filed (R. p. 91), and an order signed by the Court allowing the appeal and decreeing that pending the appeal from the decree in said cause to the Supreme Court of the United States that the portion of the decree appealed from withdrawing the temporary restraining order heretofore issued was revoked, suspended and set aside.

Bond required in the sum of ten thousand dollars was given and the same was approved, and this case is being presented here on direct appeal from the adverse decision of the Statutory Court below, which decree was rendered without any written opinion by the Court or any finding of fact on the allegations of the bill of complaint.

ARGUMENT

Point I

SECTIONS 13 AND 19, ACT NO. 103, PASSED BY THE LOUISIANA LEGISLATURE, APPROVED JULY 8, 1926, KNOWN AS THE "SHRIMP ACT", AND SECTIONS 3, 23 AND 24, ACT NO. 258, PASSED BY THE LOUISIANA LEGISLATURE, APPROVED JULY 14, 1926, KNOWN AS THE "OYSTER ACT", CONTRAVENE AND ARE IN VIOLATION OF PARAGRAPH 3, SUB-DIVISION VIII, ARTICLE I, OF THE CONSTITUTION OF THE UNITED STATES CONFERRING UPON THE CONGRESS OF THE UNITED STATES EXCLUSIVE POWER TO REGULATE COMMERCE.

In Cause No. 768 is presented the constitutionality of what is known as the "Shrimp Act", being Act No. 103, Louisiana Legislature, 1926. The entire statute is printed in the transcript of record No. 768 (Tr. 20).

Cause No. 769 presents for consideration the constitutionality of what is known as the "Oyster Act", being Act No. 258, Louisiana Legislature, 1926. Pertinent sections of this Act will be found as an appendix to this brief.

Sections 4 and 5 of the "Shrimp Act" are in the following language:

> "Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to

such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; and any person, firm or corporation so violating the provisions of this Section shall be liable to the penalties hereinafter provided.

"Section 5. That it shall be unlawful for any person, firm or corporation to seine, trawl for, catch or attempt to catch or have in possession, any salt water shrimp from beyond the waters of the State for use or sale in this State, or from the outside waters of the State, as heretofore described, or from the inside waters of the State, as heretofore described, between the fifteenth day of June and the fifteenth day of August, both dates inclusive, of any one year. It shall be unlawful for any person, firm, or corporation, otherwise authorized to operate under this act, to seine, trawl for, catch or attempt to catch, any salt water shrimp from the inside waters of this State between the first day of December and the fifteenth day of March, both dates included, and between the fifteenth day of June and the fifteenth day of August, both dates included, of any year. Any person, firm or corporation, otherwise authorized under this Act may seine, trawl for, catch or attempt to catch any salt water shrimp from the outside waters of this State, as hereinbefore described, at any time, except between June fifteenth and August fifteenth of each year, both dates included, and except between

February first and March fifteenth, of each year, both dates included. The remaining portions of the year shall be known as the open season and salt water shrimp may then be taken by any person, firm or corporation, herein otherwise authorized to do so, from any of the waters of the State and may be had in possession for sale, drying or canning, subject to the conditions stipulated in this Act. Salt water shrimp, legally taken and dried or canned within this State and upon which the license and severance taxes have been paid as required by this Act, may be bought and sold at any time. Salt water shrimp in their fresh state, legally caught during the open season, may be had in possession for drying or canning, or sale in their fresh state, for five (5) days after the end of the open season. It is not intended by the provisions of this Act to interfere with the fishermen securing shrimp for bait; or for home consumption or the local markets, in their fresh state, provided they are taken from the outside waters of the State, and provided further that shrimp for bait may be secured from either the inside or or outside waters of the State at any time."

Section 19, which provides punishment therefor, is in the following language:

"Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any provisions of this Act, where a punishment has not been otherwise provided, shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than Twenty-five Dollars ($25.00) or not more than One hundred Dollars ($100.00) for the first offense, nor less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for the second offense and for the third offense the fine shall not be less than One Hundred Dol-

lars ($100.00) nor more than Two Hundred Dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days or may impose both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violations may be confiscated by order of the Court.

"Vessels, their tackle and apparatus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken from the waters of this State, shall be seized and taken into possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the Conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred, the Sheriff being authorized to permit of the release of the said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction, providing for the return of such vessel and its apparel and apparatus to abide the judgment of the Court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the Court of violating the provisions of this law

prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or to imprisonment of not less than six months (6) nor more than one (1) year and shall be liable to both fine and imprisonment in the discretion of the Court."

In Cause No. 768, the complainant, the Foster-Fountain Packing Company, was a corporation chartered under the laws of the State of Louisiana. The charter will appear Tr. 109.

The objects and purposes of the corporation, as provided in the charter, are stated as follows:

"Article III

Object and Purposes.

"The objects and purposes for which this Corporation is organized and the general nature of the business to be carried on by it, are stated and declared to be as follows:

"1st. To do a general canning business of Oysters, shrimps and other sea foods and all vegetables and fruits;

"2nd. To own and operate boats and various kinds of equipments in the conduct of said business.

"3rd. To buy and sell and pack canned goods for food; to buy, construct and operate factories for the manufacture of canned goods for food; to do all other acts necessary or incidental to the

conduct of the canning goods business, such as the manufacture of cans, raising or growing crops for canning, and to buy, rent or lease estate for any or all of these purposes."

The Sea Food Company, complainant, was a Mississippi corporation, organized under the laws of the State of Mississippi, operating at Biloxi, Mississippi, a plant for packing shrimp and canning oysters.

Shrimp are a migratory fish, found in large and unlimited quantities within three miles of the Louisiana shore, in the waters, bays, inlets and bayous of the Gulf of Mexico adjoining the parishes of St. Bernard and Plaquemine, situated east of the Mississippi River. These shrimp do not breed in Louisiana waters but enter the waters from the Gulf on account of certain attractions for them which exist there. They are constantly moving, in one place today, and gone tomorrow. These shrimp are a well known article of food. In plants for such purpose the heads and hulls are taken off and they are packed and as a regular commodity enter into interstate and foreign commerce as an article of food.

These shrimp are not found in the Mississippi waters in large quantities. Owing to the advantageous situation of the land in and adjoining Biloxi, Harrison County, Mississippi, some fifty years ago citizens of Louisiana came to Mississippi and began the business of packing for sale and shipment in interstate commerce, shrimp. These shrimp have been obtained in Louisiana waters, described in the pleadings in this case, brought to Biloxi in boats, where the heads and hulls were taken therefrom, and there packed and sold both in interstate and foreign commerce. In the past few years the business has been greatly developed. At the time this suit was filed there were approximately sixteen factories at Biloxi, Mississippi, engaged in packing shrimp and selling the commodity as a food

in interstate and foreign commerce, the total investment in which aggregated over $1,000,000.00, in which several thousand persons were employed, and the annual sales therefrom exceeded $1,000,000.00.

Upon August 14, 1927, the Foster-Fountain Packing Company, one of the plaintiffs in error, entered into a contract (Tr. 19) by which it obligated itself to acquire in the State of Louisiana certain shrimp, and to transport, sell and deliver to the Sea Food Company, one of the plaintiffs in error, at Biloxi, Mississippi, 1,000 cases thereof per month during the season of 1927-1928.

The open season for shrimp in 1927 opened June 15th. The authorities in the state of Louisiana, being the defendants in error in this case, charged with the enforcement of the "Shrimp Act", immediately placed boats and officers in charge thereof in the waters in question for the purpose of enforcing the act and preventing shrimp being transported with the heads or hulls thereupon from Louisiana to Mississippi.

The evidence established that the territory in Louisiana contiguous to these waters was not favorable to packing shrimp; that there were one or two small factories situated in this territory east of the Mississippi River, but that conditions were unfavorable; the country was low and marshy, habited by mosquitoes. That the shrimp existed in these waters in unlimited and ever increasing quantities; that unless they were caught today they would be gone tomorrow. That the hulls and heads of the shrimp were of very slight value; that as the usual custom where shrimp are packed in the State of Louisiana at local plants the heads and hulls were thrown away; that they are very offensive by reason of their odor, and give a great deal of trouble; that they were usually thrown back into the Gulf; that a negligible portion thereof, however, were dried at plants for that purpose and made

into what is known as shrimp bran, a commodity which could be used in the manufacture of fertilizer, but when so treated this commodity was invariably shipped out of the State of Louisiana; that probably not over five per cent of the shrimp caught in Louisiana waters were actually consumed in the state; that 95 per cent were packed and shipped in interstate commerce; that only a negligible quantity of the heads and hulls of the shrimp packed in Louisiana were preserved at all; those were made into shrimp bran, as aforesaid, and shipped into fertilizer factories in other states. These facts abundantly appear, not only from the statement of facts hereinbefore contained, but from the following affidavits contained in the record:

Louis Brown (Tr. 58); A. S. Gorenflo, and eleven other fishermen (Tr. 60); L. O. Johnson (Tr. 71); Ernest Desporte, Jr., (Tr. 77); O. G. Swetman (Tr. 83); C. B. Foster (Tr. 85); Victor Ellis (Tr. 86); R. Hart Chinn (Tr. 87); Oscar Oliver (Tr. 94); Lewis Carlotte (Tr. 95); A. R. Heidenheim (Tr. 96); L. G. Moore (Tr. 97); E. C. Tonnemire (Tr. 98); Tony Williams (Tr. 100).

It appeared from the affidavits of the defendants in error that the hulls and heads of the shrimp had some fertilizer value (Donald W. Howe, Tr. 103), and that there were plants in the State of Louisiana where they were utilized for the purpose of making shrimp bran (Stanley C. Arthur, Tr. 117; Charles F. Greiner, Tr. 124; James V. Dunbar, Tr. 128; and Dr. L. H. Jastremski, Tr. 131); but the evidence was undisputed that all of the heads and hulls of shrimp made into shrimp bran at Louisiana plants were shipped in interstate commerce, practically all of it going to Biloxi, Mississippi, (R. L. Cohen, Tr. 127), where the same was used in making fertilizer.

The evidence established that but for the restraining order obtained in the case that the plaintiff in error would have been prevented from consummating the contract hereinbefore referred to; and the three judge court that heard the case found as a matter of fact that unless the status quo was preserved on appeal that irreparable harm, injury and damage would be sustained by plaintiffs in error (Tr. 138).

Cause No. 789 involves the constitutionality of the "Oyster Act", being Act No. 258, Louisiana Legislature of 1926.

Sections 2 and 3 of the Act are in the following language:

"Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State, to any firm or association composed of citizens or residents of this State, or to any corporation domiciled in, or organized under the laws of this State, having their factory or shucking plant or places of business located within the State, upon the terms and conditions and subject to the restrictions and regulations herein set forth, or under the authority of which may be imposed by the Department of Conservation of this State. No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for the cultivation and propagation of oysters for any of the above purposes. Any person, firm, association or corporation, violating any of the provisions of

this section shall be liable to the penalties hereinafter provided. Any person, firm, or corporation, properly licensed to operate in the oyster industry in this State shall be permitted to employ such labor, resident or non-resident, as may be required and to employ such vessels and their crew, resident or non-resident, as may be required upon said vessels being properly licensed as hereinotherwise provided. This right to employ such non-resident labor or non-resident vessels shall be confined to the operation of any licensees as carried on within the State of Louisiana.

"Section 3. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as cultch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw oyster shells beyond the foregoing requirements may be used for road building purposes, or ground for use as chicken feed or fertilizer, or any other purpose of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product it shall be lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified in-

terest or property in the oysters so taken in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larceny or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon bedding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

Sections 23 and 24 provide punishment therefor, and the method of enforcing the Act. The "Shrimp" and the "Oyster Act" are similar; in fact identical in purpose. A criminal penalty is provided of a fine ranging from $100.00 to $5,000.00, imprisonment in the county jail from ninety days to two years, or both. (Section 24). Section 23 provides for a confiscation of the vessel used for such purpose.

The facts in respect to the "Oyster Act", cause No. 769, are very similar to those in the "Shrimp Act." The Sea Food Company, a Louisiana corporation, was chartered under the laws of the State of Louisiana for such purpose (Tr. 22), Article 4 of the charter being in the following language:

> "The objects and purposes for which this corporation is organized, and the nature of the business to be carried on by it are hereby declared to be: To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish, and generally to do and engage in any business or enterprise connected with, growing out of, or incidental to the objects and purposes hereinbefore set forth or contemplated by this charter."

L. O. Johnson was an individual at Biloxi, Mississippi, operating an oyster canning plant. The Sea Food Company entered into a contract (Tr. 25) by which it bound itself to transport and convey from the waters of the State of Louisiana to Biloxi, Mississippi, 1,000 barrels of oysters per day for a stipulated price. The oyster business, like the shrimp business, began at Biloxi, Mississippi, in a small way by Louisiana citizens, because of the favorable conditions surrounding the manufacture of the commodity at such point, and the very unfavorable conditions existing in the parishes of St. Bernard and Plaquemine in the State of Louisiana, east of the Mississippi River.

In 1912 this industry had reached such proportions that the Legislature of Louisiana, in order to induce the canning of these oysters in Louisiana, passed an act prohibiting the shipment of oysters out of the state in shells for the purpose of canning beyond the limits of the state. Specific reference will be made to this statute

later. The same was stricken down as being unconstitutional and not a legitimate exercise of its police power by the Supreme Court of Louisiana.

The proof established that oysters are recognized as an article of interstate commerce. Large plants in the State of Louisiana are operated west of the Mississippi River where shrimp are packed and oysters are canned, all of which is done in order to prepare the same as a commodity for interstate commerce. That no plant, however, has ever been able to operate successfully in the territory in Louisiana east of the Mississippi River involved in this suit, because of unfavorable conditions hereinbefore referred to. For that reason Louisiana people built up the manufacturing establishments at Biloxi, Mississippi. There are some fifteen or twenty plants canning oysters at Biloxi, Mississippi; a large sum of money is invested therein, and several thousand persons are employed.

The prevention of compliance with the contract entered into by plaintiffs in error would cause their investment at Biloxi, Mississippi, to be valueless, throw many persons out of employment, and would deprive plaintiffs in error of the profit accruing to them by reason of the execution of the contract.

It is conceded that January 1st, 1928, when the Act went into effect, that the defendants in error, who are charged by the Act complained of with enforcement thereof, were patroling the waters in the State of Louisiana to prevent oysters being taken out in the shells, as provided by the Act, and that but for the restraining order the consummation of the contract would have been interfered with; that the agents and servants in charge of the boats would have been arrested and the boats seized and confiscated.

The affidavits offered by plaintiffs in error show that not five per cent of the oysters grown in the State of Louisiana were used therein; that 95 per cent thereof

were sold in interstate commerce; that east of the Mississippi River in the territory where the plaintiffs in error expect to acquire oysters for filling this contract, they exist in very vast quantities, in fact in many places the oyster reefs are being damaged by reason of the fact that the oysters have not been removed; that a very negligible use is made in the State of Louisiana of the shells or oysters; that in the reefs especially in the territory involved in this suit that there are millions and millions of old oyster shells; that as a general practice where the shells are taken from oysters at plants in Louisiana they are thrown away and used for no purpose; that, however, the shells may be used for ballasting railroads, and out of the shells there may be made a commodity susceptible of being used as chicken feed and/or fertilizer, but that where the oyster shells are so treated the commodity is invariably shipped out of the State of Louisiana; that from the reefs in the territory involved in this suit from 5,000 to 10,000 barrels of oysters per day can be taken without disadvantage; that not only are there millions of oyster shells on these reefs which are valueless on account of the vast number, but that the conservation authorities are selling these oyster shells, permitting the purchasers to convert the same into a salable commodity, none of which is used in the State of Louisiana but is shipped to other states in Interstate Commerce; that oysters are a recognized commodity in Interstate Commerce and in Louisiana are packed and sold in large quantities. See affidavits, Ernest Desporte, Jr., (Tr. 38); Anna R. Heidenheim (Tr. 41); Louis Braun (Tr. 44); R. Hart Chinn (Tr. 45); L. O. Johnson (Tr. 49); J. R. McKinnon (Tr. 72); C. B. Foster (Tr. 76); B. Taltavul (Tr. 80).

The three judge court, while denying the application of plaintiffs in error for an interlocutory injunction, found that unless the status quo was preserved that the plaintiffs in error would sustain irreparable harm, injury and damage (Tr. 92).

It must be borne in mind that in each of the cases the complainants, the plaintiffs in error, might have acquired the shrimp and oysters with which to complete their contracts, either by purchasing the same from some person, firm or corporation in Louisiana authorized and licensed to catch and take the same, or to catch and take the same themselves, unless prohibited by the Act from so doing, if the Legislature of the State could constitutionally deny a Louisiana corporation such right.

Both the Foster-Fountain Packing Company and the Sea Food Company of Louisiana were Louisiana corporations, but neither operated a drying plant within the State, it being their contention, as will be hereinafter set out, that the State could not impose as a condition to their catching shrimp and taking oysters, a right granted to all citizens of the State, a condition that they operate a drying plant within the State. The right of the Foster-Fountain Packing Company and the Sea Food Company of Louisiana to obtain shrimp and oysters with which to fill their respective contracts, would not depend, however, upon their legal right to catch the shrimp or to take the oysters within the State, because if such right could be legally denied them they could acquire the shrimp and oysters from persons or corporations legally entitled to catch the same under the Acts.

The plaintiffs in error in these cases are not contending for the right to catch shrimp or to take oysters or to remove the same from the State of Louisiana during what is known as the closed season; neither do they desire to do so without paying the severance tax imposed by the State of Louisiana therefor as a police measure. The "Shrimp Act" provides the manner in which shrimp may be caught, the kind of trawls with which they may be taken. The "Oyster Act" provides that the oysters when taken from the reefs shall be culled and the small ones left on the reefs. The appell-

ants and plaintiffs in error regard all such regulations as legitimate conservation measures and have, notwithstanding the restraining order, complied and offered to comply therewith.

The plaintiffs in error assert that, having acquired, within the State of Louisiana, shrimp or oyster or either by catching the same, if they may not be deprived of such right, or by purchasing the same, that they can not, under either Act, be deprived of the right of transporting such shrimp or oysters beyond the limits of the State, and that the sections of the Act, hereinbefore referred to, which prohibit the taking of shrimp from the State unless the heads and hulls have been taken therefrom, and that section of the "Oyster Act" which prohibits the taking of oysters from the state in shells, are in violation of the Commerce Clause of the Constitution of the United Sates.

Paragraph 3, Sub-Division VIII, Article I, of the Constitution of the United States, confers upon the Congress of the United States the exclusive power to regulate commerce with foreign nations and among the several states. The provision is in the following language:

> "3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Paragraph 2, Article 6 of the Constitution of the United States is in the following language:

> "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

By the sections complained of the Legislature of the State of Louisiana says that the oysters shall not be shipped in Interstate Commerce unless and until the shells have been taken therefrom; that the shrimp shall not be shipped from the State of Louisiana in Interstate Commerce until the heads and hulls have been taken therefrom. Each of the Acts contains an express provision regulating the shipment of shrimp and oysters in Interstate Commerce.

It was perfectly apparent to that able body of men who prepared and submitted to the American people for acceptance or rejection the Constitution of the United States, that an intolerable condition was created through the selfishness of the members of the confederacy in their regulation of commerce among themselves, and that there could be no permanent Union unless this important matter was left under the exclusive control of the central government.

In "A History of the American People" by Woodrow Wilson, Volume III, page 54, the following language is used:

> "In 1786 they were asked to intrust to the Congress at least the collection and use of a revenue laid upon imports; and so plain had both the necessity and the propriety of such an addition to its efficiency by that time become that all of the states except New York consented. But it required the unanimous consent of the States to amend the Articles of Confederation, and New York's refusal set even this aside. New York had no mind to relinquish the duties which she collected for herself at her great port,—not only upon foreign commerce but also upon goods brought out of the other States, her neighbors; on farm produce and garden-truck from New Jersey and firewood from Connecticut,—making her spreading harbor a veritable toll-gate.

"There was in all this one of the most serious signs of the times. The States indulged to the top of their bent a petty hostility towards each other. New York was by no means the only State that laid duties on merchandise brought in from the farms and shops of her neighbors. There was everywhere the same jealous spirit, the same striving for every paltry advantage, the same alert and aggressive selfishness; and the more the States deemed their interests antagonistic the more like a mere rope of sand did the Confederation become. 'We are either a united people, or we are not,' exclaimed Washington. 'If the former, let us in all matters of general concern act as a nation which has national character to support; if we are not, let us no longer act a farce by pretending it.' England, apparently, expected the weak structure presently to fall to pieces."

The Federalist, in discussing causes of friction likely to give rise to war between the States, at page 29, uses the following language:

"The competitions of commerce would be another fruitful source of contention. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbors. Each State, or separate confederacy, would pursue a system of commercial policy peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent. The habits of intercourse, on the basis of equal privileges, to which we have been accustomed from the earliest settlement of the country, would give a keener edge to those causes of discontent, than they would naturally have, independent of this circumstance. We should be ready to denominate injuries those things which were in reality the justifiable acts of independent sovereignties consulting

a distinct interest. The spirit of enterprise, which characterizes the commercial part of America, has left no occasion of displaying itself unimproved. It is not at all probable that this unbridled spirit would pay much respect to those regulations of trade by which particular States might endeavor to secure exclusive benefits to their own citizens. The infractions of these regulations on one side, the efforts to prevent and repel them on the other, would naturally lead to outrages, and these to reprisals and wars.

The opportunities which some states would have of rendering others tributary to them, by commercial regulations, would be impatiently submitted to by the tributary States. The relative situation of New York, Connecticut, and New Jersey would afford an example of this kind. New York, from the necessities of revenue, must lay duties on her importations. A great part of these duties must be paid by the inhabitants of the two other states in the capacity of consumers of what we import. New York would neither be willing nor able to forego this advantage. Her citizens would not consent that a duty paid by them should be remitted in favor of the citizens of her neighbors; nor would it be practicable, if there were not this impediment in the way, to distinguish the customers, in our own markets. Would Connecticut and New Jersey long submit to be taxed by New York for her exclusive benefit? Should we be long permitted to remain in the quiet and undisturbed enjoyment of a metropolis, from the possession of which we derived an advantage so odious to our neighbors, and, in their opinion, so oppressive? Should we be able to preserve it against the incumbent weight of Connecticut on one side, and the co-operating pressure of New Jersey on the other? These are questions that temerity alone will answer in the affirmative."

In the case of *Gibbons v. Ogden*, 9 *Wheat.* 1, 6 *L. ed.* 23, Judge Marshall, in delivering the opinion of the court, announced that the power of Congress to regulate interstate commerce has no limitation except such as is found in the constitution itself.

In the case of *Brown v. Maryland*, 12 *Wheat* 420, 6 L. ed. 678, Mr. Justice Marshall used the following language:

> "The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten. It was regulated by foreign nations with a single view to their own interests; and our disunited efforts to counteract their restrictions were rendered impotent by want of combination. Congress, indeed, possessed the power of making treaties; but the inability of the federal government to enforce them had become so apparent as to render that power in a great degree useless. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the federal government contributed more to the great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise, that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the states. To construe the power so as to impair its efficacy, would tend to defeat an object, in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity.

"What, then, is the just extent of a power to regulate commerce with foreign nations, and among the several states?

"This question was considered in the case of *Gibbons v. Ogden* (9 Wheat. Rep. 1), in which it was declared to be complete in itself, and to acknowledge no limitations other than are prescribed by the constitution. The power is co-extensive with the subject on which it acts, and cannot be stopped at the external boundary of a State, but must enter its interior.

"We deem it unnecessary now to resort to any part of these propositions. Their truth is proved by facts continually before our eyes, and was, we think, demonstrated, if they could require demonstration, in the case already mentioned."

The defendant in error claims that such of the acts were passed by the Legislature of the State of Louisiana in the exercise of the legitimate police power of the state, for the purpose of preserving its natural resources.

In the case of *McReady v. Virginia*, 94 U. S. 391, 24 L. ed. 248, the State of Virginia passed an act to prevent a non-resident of the state from planting oyster beds in the waters of the state. The appellant, a resident of Maryland, violated the law, was convicted, and on the assertion of federal rights, appealed to the Supreme Court of the United States. The conviction was affirmed in the following language:

"Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one state are not invested by this clause of the Constitution with an interest in the common property of the citizens of another state. If Virginia had by law provided for the sale of its own vast public domain,

and a division of the grounds among its own people, no one, we venture to say, would contend that the citizens of other states had a constitutional right to the enjoyment of the privileges of Virginia citizenship. Neither if, instead of selling, the state had appropriated the same property to be used as a common by its people for the purposes of agriculture, could the citizens of other states avail themselves of such a privilege. And the reason is obvious; the right thus granted is not a privilege or immunity of general but of special citizenship. It does not 'belong of right to the citizens of all free governments,' but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed. They, and they alone, owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit. They owned it not by virtue of citizenship merely, but of citizenship and domicile united; that is to say, by virtue of a citizenship confined to that particular locality.

"The planting of oysters in the soil covered by water owned in common by the people of the State is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purpose of cultivation and profit; and if the state, in the regulation of its public domain, can grant to its own citizens the exclusive use of dry lands, we see no reason why it may not do the same thing in respect to such as are covered by water. And as all accounts that a state may grant to one of its citizens the exclusive use of a part of the common property, the conclusion would seem to follow that it might by appropriate legislation confine the use of the whole to its own people alone.

"Neither do we think this case is at all affected by the clause of the Constitution which confers power on Congress to regulate commerce. Art. I., Sec. 8. There is here no question of transportation

or exchange of commodities, but only of cultivation and production. Commerce has nothing to do with land while producing, but only with the product after it has become the subject of trade. Virginia, owning land under water adapted to the propagation and improvement of oysters, has seen fit to grant the exclusive use of it for that purpose to the citizens of the state. In this way, the people of Virginia may be enabled to produce what the people of the other states can not; but that is because they own property which the others do not. Their productions do not spring from commerce, but commerce to some extent from them.

"We are unable to agree with the counsel for the plaintiff in error in this argument, that the right of planting may be enforced as a privilege of interstate citizenship, even though that of taking can not. 'Planting means, in 'oysterman's phraseology,' as counsel say, 'depositing with the intent that their oysters shall remain until they are fattened.' The object is, therefore, to make use of the soil and the water above it for the improvement and growth of that which is planted. It is this use, as has already been seen, that the State has the right, by reason of its ownership, to prohibit. The judgment is affirmed."

It will be noted that in that case no question of interstate commerce was involved, since the Act was directed against planting oyster beds, and had no reference to sale or transportation of oysters.

In the case of *Geer v. State of Connecticut*, 161 U. S. 519, 40 L. ed. 793, it appeared that a statute had been passed forbidding the killing of birds within the State of Connecticut, and also making unlawful the possession of such birds within the state for the purpose of transportation beyond the limits thereof. A demurrer was

sustained to that portion of the indictment charging the defendant with having unlawfully killed the birds, because the indictment showed that the same were killed during the open season permitted by the statute. The court overruled the defendant's demurrer to that portion of the indictment charging that he had in his possession with the intent to ship beyond the limits of the state the birds in violation of the statute. The court held that the state held title as trustee for the people to the bird life within the state, and that it could regulate the sale and distribution thereof within the state. In other words, in order to preserve the birds as a food for its people it could prevent the transportation thereof beyond the limits of the state. The opinion is predicated solely upon the philosophy that the legislative enactment complained of was a declaration on the part of the people of the state that it was to the interest of the state that the birds as a food be kept within the state for the common use of the people thereof. Mr. Chief Justice White, who delivered the opinion for the court, formulated the proposition in the following language:

> "The court found that the information did not charge the first of these offenses, and therefore that the sole offense which it covered was the latter. It then decided that the state had power to make it an offense to have in possession, for the purpose of transportion beyond the state, birds which had been lawfully killed within the state during the open season, and that the statute, in creating this offense, did not violate the interstate commerce clause of the Constitution of the United States. The correctness of this latter ruling is the question for review. In other words, the sole issue which the case presents is, Was it lawful under U. S. Const. Art. 1, Sec. 8, for the State of Connecticut to allow the killing of birds within the state during a designated open season, to allow such birds, when so killed, to be used, to be sold, and to be bought for use within the state,

and yet to forbid their transportation beyond the state? Or, to state it otherwise, had the state of Connecticut the power to regulate the killing of game within her borders so as to confine its use to the limits of the state and forbid its transmission outside of the state?"

After reviewing the Roman and English law upon the subject, the Chief Justice announced that the principles thereof were applicable to the colonies at the time of the formation of this government and became the law of the states forming the union using the following language:

> "Undoubtedly this attribute of government to control the taking of animals *ferae naturae*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters, or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the states with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal Government by the Constitution."

It will be noted, however, that the Constitution of the United States and the Acts of Congress passed in pursuance thereof had become and were the supreme law of the land, and the Chief Justice was careful to point out that such principles only became applicable and were enforceable in the states except as the same conformed to the paramount law. The court then announced the reason upon which the determination rests, that is to say, that a state could prohibit and regulate the taking and the sale within the state of birds or game in pursuance of its

trusteeship, out of which grew its right to preserve birds or game for the benefit of the people in the state. The court used the following language:

> "Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the facts that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good. Therefore, for the purpose of exercising this power, the state, as held by this court in *Martin v. Waddell*, 41 U. S. 16 Pet. 410 (10: 1012), represents its people, and the ownership is that of the people in their united sovereignty. The common ownership, and its resulting responsibility in the state, are thus stated in a well considered opinion of the supreme court of California: 'The wild game within a state belongs to the people in their collective sovereign capacity. It is not the subject of private ownership, except in so far as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or any traffic and commerce in it, if deemed necessary for its protection or preservation, or the public good.' *Ex Parte Maier, ubi supra.*
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> "The same view has been expressed by the Supreme Court of Minnesota as follows:
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> " 'We take it to be the correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor but in its sovereign capacity, as the representative and for the benefit of all its people in common.' *State v. Rodman, supra.*

"The foregoing analysis of the principles upon which alone rests the right of an individual to acquire a qualified ownership in game, and the power of the state, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the state of Connecticut here in controversy. The sole consequence of the provision forbidding the transportation of game killed within the state, beyond the state, is to confine the use of such game to those who own it, the people of that state. The proposition that the state may not forbid carrying it beyond her limits involves, therefore, the contention that a state cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other states to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the state has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of state commerce, as a resulting necessity such property has become the subject of interstate commerce, hence controlled by the provisions of U. S. Const. Art. 1, Sec. 8. But the errors which this argument involves are manifest. It pre-supposes that where the killing of game and its sale within the state are allowed, it thereby becomes commerce in the legal meaning of that word. In view of the authority of the state to affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the state, it may well be doubted whether commerce is created by an authority given by a state to reduce game within its borders to possession, provided such game

be not taken, when killed, without the jurisdiction of the state. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the state necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the state, under the provisions in quesion, created internal state commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce, and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and interstate commerce is marked, and has always been recognized by this court. "

The Chief Justice made it perfectly apparent that the principles announced rest solely and only upon the right of the state, for the use and benefit of the people, to keep the birds or animals within the limits of the state. Such is made abundantly clear from the following language contained in the opinion:

"In *State v. Rodman*, 58 Minn. 393, the supreme court of Minnesota said:

" 'The preservation of such animals as are adapted to consumption as food or to any other useful purpose, is a matter of public interest, and it is within the police power of the state, as the representatives of the people in their united sovereignty, to make such laws as will best preserve such game, and secure its beneficial use in the future to the

citizens, and to that end it may adopt any reasonable regulations, not only as to time and manner in which such game may be taken and killed, but also imposing limitations upon the right of property in such game after it has been reduced to possession. Such limitations deprive no person of his property, because he who takes or kills game had no previous right to property in it, and when he acquires such right by reducing it to possession he does so subject to such conditions and limitations as the legislature has seen fit to impose.' See also *State v. Northern P. Exp. Co.* 58 Minn. 403.

"So also in *Magner v. People,* 97 Ill. 320, the supreme court of Illinois said:

" 'So far as we are aware, it has never been judicially denied that the government under its police powers may make regulations for the preservation of game and fish, restricting their taking and molestation to certain seasons of the year, although laws to this effect, it is believed, have been in force in many of the older states since the organization of the Federal government . . . . . The ownership being in the people of the state, the repository of the sovereign authority, and no individual having any property rights to be affected, it necessarily results that the legislature, as the representatives of the people of the state, may withhold or grant to individuals the right to hunt and kill game or qualify or restrict, as in the opinions of its members will best subserve the public welfare. Stated in other language, to hunt and kill game is a boon or privilege, granted either expressly or impliedly by the sovereign authority, not a right inherent in each individual, and consequently nothing is taken away from the individual when he is denied the privilege at stated seasons of hunting and killing game. It is perhaps accurate to say that the ownership of the

sovereign authority is in trust for all the people of the state, and hence by implication it is the duty of the legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use in the future to the people of the state. But in any view, the question of individual enjoyment is one of public policy and not of private right."

In respect to the application of these principles to the commerce clause of the Constitution of the United States, the court held that interstate commerce was only remotely affected, using the following language:

"Aside from the authority of the state, derived from the common ownership of game and the trust for the benefit of its people which the state exercises in relation thereto, there is another view of the power of the state in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in a state of a police power to that end, which may be none the less efficiently called into play because by doing so interstate commerce may be remotely and indirectly affected. *Kidd v. Pearson*, 128 U. S. 1 (32: 346), 2 Inters. Com. Rep. 232; *Hall v. De Cuir*, 95 U. S. 485 (24: 547); *Sherlock v. Alling*, 93 U. S. 99, 103 (23: 819, 820); *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 194 (6: 69). Indeed, the source of the police power as to game birds (like those covered by the statute here called in question) flows from the duty of the state to preserve for its people a valuable food supply. *Phelps v. Racey*, 60 N. Y. 10, 19 Am. Rep. 140; *Ex Parte Maier*, ubi supra; *Magner v. People*, ubi supra, and cases there cited. The exercise by the state of such power therefore comes directly within the principle of *Plumley v. Massachusetts*, 155 U. S. 461, 473 (39: 223, 227). The power of a state to protect by adequate police regulation its people against the adulteration of articles of food (which

was in that case maintained), although in doing so commerce might be remotely affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the state, which can only become the subject of ownership in a qualified way, and which can never become the object of commerce except with the consent of the state and subject to the conditions which it may deem best to impose for the public good."

We make no attack upon the correctness of this opinion. We will, however, call the attention of the Court to the fact that of the nine members of the Court, Mr. Justice Brewer and Mr. Justice Peckham, took no part in the decision of the case; that the opinion written by the Chief Justice was concurred in by four of the Justices participating in the decision of the case. That strong dissenting opinions were rendered by Mr. Justice Field and Mr. Justice Harlan. Mr. Justice Field used the following language:

> "In an opinion written by me some years since I had occasion to speak of this rule of law. I there said that it was a general principle of law, both natural and positive, that where a subject, animate or inanimate, which otherwise could not be brought under the control or use of man, is reduced to such control or use by his individual labor or skill, a right of property in it is acquired. The wild bird in the air belongs to no one, but when the fowler brings it to the earth and takes it into his possession it is his property. He has reduced it to his control by his own labor, and the law of nature and the law of society recognize his exclusive right to it. The pearl at the bottom of the sea belongs to no one, but the diver who enters the water and brings it to light has property in the gem. He has by his own labor reduced it to possession, and in all communities and by all law

his right to it is recognized. So the trapper on the plains and the hunter in the north have a property in the furs they have gathered, though the animals from which they were taken roamed at large and belonged to no one. They have added by their labor to the uses of man an article promoting his comfort, which, without that labor, would have been lost to him. They have a right, therefore, to the furs, and every court in Christendom would maintain it. So when the fisherman drags by his net fish from the sea, he has a property in them, of which no one is permitted to despoil him. *Spring Valley Water Works v. Schottler*, 110 U. S. 374, (28: 183).

"In *State v. Saunders*, 19 Kan. 127, 27 Am. Rep. 98, the defendant was charged, as the agent of the Adams Express Company, with receiving at Columbus, Kansas, 'certain prairie chickens, which had been recently killed as game', and shipping them to the city of Chicago, in the state of Illinois. The statute under which he was prosecuted made it unlawful for any person to transport or to ship any animals or birds mentioned, among which were prairie chickens, out of the state of Kansas, and subjected him on conviction thereof to a fine of not less than ten nor more than fifity dollars. The defendant admitted the facts as alleged, but contended that such acts constituted no offense, claiming that the statute of the state under which the proceedings against him were commenced were unconstitutional and void. The district court held the statute valid, and found the defendant guilty, and sentenced him to pay a fine of $10.00 and costs of prosecution. From the conviction and sentence he appealed to the supreme court of Kansas, which reversed the judgment of the district court, holding "that no state can pass a law (whether Congress has already acted upon the subject or not) which

will directly interfere with the free transportation from one state to another, or through a state, of anything which is or may be a subject of interstate commerce;' and referred to the case of *Welton v. Missouri*, 91 U. S. 275, 282, (23: 347, 350), where it was held by this court that 'the fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question; its inaction on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be free and untrammeled.'

"I do not doubt the right of the state, by its legislation, to provide for the protection of wild game, so far as such protection is necessary for their preservation or for the comfort, health, or security of its citizens, and does not contravene the power of Congress in the regulation of interstate commerce. But I do deny the authority of the state, in its legislation for the protection and preservation of game, to interfere in any respect with the paramount control of Congress in prescribing the terms by which its transportation to another state, when killed, shall be restricted to such conditions as the state may impose. The absolute control of Congress in the regulation of interstate commerce, unimpeded by any state authority, is of much greater consequence than any regulation the state may prescribe with reference to the place where its wild game, when killed, may be consumed.

"When property, like the game birds in this case, is reduced to possession it becomes an article of commerce, and may be the subject of sale to the citizens of one state or community, or to the citizens of several. The decision of the court, however, would limit the right of sale of

such property, however valuable it may become, and whether living or killed, to the directions of the state or community in which the property is found, and would convert it from the freedom of use which belongs to property in general to the limited use of the persons or communities where found, or to a particular class to which only property possessed of special ingredients or qualities is limited. I do not think it lies within the province of any state to confine the assimilation of any articles of food within its borders to its own fortunate inhabitants to the exclusion of others, and that it may lawfully require that game killed within its borders shall only be eaten in such parts of the country as it may prescribe.

"By the Constitution of the United States it has been adjudged that commerce between the states is under the absolute regulation of Congress, and that whenever an article of property begins to move from one state to another, commerce between the states has commenced, and that with its control or regulation no state can interfere. *Welton v. Missouri*, 91 U. S. 275 (23: 347); *Henderson v. Wickham*, 92 U. S. 259 (23: 543); *Chy Lung v. Freeman*, 92 U. S. 275 (23: 550); *Ward v. Maryland*, 79 U. S. 12 Wall. 418 (20: 449); *Philadelphia & R. R. Co. v. Pennsylvania* ('the State Tax on Railway Gross Receipts') 82 U. S. 15 Wall. 284 (21: 164); *Sherlock v. Alling*, 60, U. S. 69 (23: 819)."

Mr. Justice Harlan used the following language:

"The plaintiff in error was not charged with having in his possession game that had been killed 'for the purpose of conveying the same beyond the limits of the state.' It is admitted that the game in question was lawfully killed, that is, was killed during what was called the 'open season.'

that the charge was that the defendant unlawfully received and had in his possession, with the wrongful and unlawful intent to prevent the transportation of the same beyond the limits of the state, certain woodcock, ruffled grouse, and quail killed within the state after the 1st day of October.

"I do not question the power of the state to prescribe a period during which wild game within its limits may not be lawfully killed. The state, as we have seen, does not prohibit the killing of game altogether, but permits hunting and killing of woodcock, quail, ruffled grouse and pinnated grouse between the 1st day of October and the 1st day of January. The game in question having been lawfully killed, the person who killed it and sold it into his possession became the rightful owner thereof. This, I take it, will not be questioned. As such owner he could dispose of it to sell or sale, at his discretion. So long as it was in his or use as food, the state could not interfere with his disposition of it, any more than it could interfere with the disposition by the owner of other personal property that was not noxious to its inhabitants. To hold that the person receiving personal property from the owner may not receive it with the intent to send it out of the state is to recognize an arbitrary power in the government which is inconsistent with the liberty belonging to every man, as well as with the rights which inhere in the ownership of property. Such a holding would also be inconsistent with the freedom of interstate commerce which has been established by the Constitution of the United States. If the majority had not held differently in the present case, I should have said that the decision was unnecessary to show the soundness of the propositions just stated. But it seems that if the citizens, whether residing in Connecticut or elsewhere, finds in the markets of one of the cities

and treasurer, hereinafter referred to as the second party, on this the 2nd day of January, 1928, as follows, witnesseth:

That whereas, said Sea Food Company is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with authority derived from its charter to catch, fish, buy, sell oysters and shrimp in the State of Louisiana, and to import and export such oysters and fish to and from the State of Louisiana, and

Whereas, the party of the first part is engaged in the canning of oysters in the City of Biloxi, Harrison County, Mississippi, and further engaged in the opening of oysters for sale raw and in the shipment of oysters to customers in various states in their raw and natural state, and

Whereas, in order to successfully carry on this business, said first party has need of a large and plentiful supply of oysters and the said second party is in a position to supply said oysters to said first party, now, therefore, in consideration of the premises and the sum of one dollar mutually paid by each party hereto to the opposite party, and of the future benefits and profits running to each party of this agreement from the opposite party and from the agreement itself, said parties do agree as follows:

That during the oyster season of 1928, including all months during the year 1928, in which oysters are allowed to be caught in the State of Louisiana, the first party agrees to purchase from the second party and the said second party agrees to sell and deliver at Biloxi, Mississippi, or to such other points in Mississippi as may be designated by said first party from the said second party oysters in the shell to the extent of 1,000 barrles per day for each day during said season, except Sundays and holidays.

Upon delivery of said oysters by said second party to the wharf of the said first party in Biloxi, Mississippi, or [fol. 42] on board boats or other craft designated by said first party at such place in Mississippi as may be later agreed upon between the parties hereto, the said first party agrees to pay to said second party the following prices for said oysters, that is, the said first party will pay said second party for all steam oysters delivered to him at the places herein mentioned the prevailing market price of said oysters in Biloxi, Mississippi, on the day of delivery of said oysters to said first party, and to pay to said sec-

ond party for all raw oysters delivered by it at Biloxi, Mississippi, or elsewhere, what may be the prevailing market price for raw oysters in Biloxi, Mississippi, on the day of the delivery of said oysters, in accordance with the terms of this agreement.

It is further agreed between the parties hereto that the word "barrel" mentioned herein shall be construed to mean a barrel of the size and quantity that is now and has customarily been used in Biloxi, Mississippi, as a measure in the purchase and sale of oysters.

It is further agreed between the parties hereto that in the event the said first party desires any of the oysters herein mentioned to be delivered to piers or factories other than the factory of the first party, that upon being requested in writing, the said second party will make delivery to any designated pier in Biloxi, Mississippi, that can be reached by schooner or freight boats of the capacity usually used in Biloxi, Mississippi, but in no event shall delivery be required at any point in Mississippi Sound further east than Biloxi, Mississippi.

It is further agreed between the parties hereto that all oysters delivered are to be paid for on the day next succeeding the date of the delivery of said oysters.

It is further agreed between the parties hereto that in making delivery of said oysters the said second party shall have the right to require the use of any of the power boats owned by the first party, and which are not required to be used by the said first party in carrying on his business in the State of Mississippi, provided that if such boats are so used by the said second party then a reasonable rental for said boats shall be paid by said second party to said first party.

Witness our signatures at Biloxi, Mississippi, this the 12th day of January, A. D. 1928.

L. O. Johnson, Jr., Sea Food Company, Per A. R. Heidenheim, Secty.

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE AND ASSIGNING CAUSE TO BE HEARD BEFORE THREE JUDGES—Filed Jan. 20th, 1928

Upon consideration of the foregoing Bill of Complaint with its affidavits and exhibits;

It is ordered by the Court that the defendant in said Bill of Complaint Do Show Cause on the 26th day of January, 1928, at eleven o'clock, A. M. at New Orleans, La., why an interlocutory injunction pendente lite should not issue as prayed for in said Bill of Complaint herein;

And the Court considering that said application for an interlocutory injunction should be heard and determined by three Judges and having requested the Honorable Rufus E. Foster, U. S. Circuit Court Judge, and the Honorable Edwin R. Holmes and the Honorable Louis H. Burns, District Court Judges to assist in hearing and determining said application:

It is ordered that this cause be sent down for hearing before the Honorable Rufus E. Foster, Judge of the Circuit Court of Appeals, and the Honorable Edwin R. Holmes and Honorable Louis H. Burns, Judges of the United States District Court, at New Orleans, La., on the 26th day of January, 1928, at 11:00 o'clock, A. M., on complainant's said application for a preliminary injunction.

It is further ordered that the Governor and the Attorney General of the State of Louisiana, and all the other parties of record herein be notified of this order.

New Orleans, La., January 20th, 1928.

(Sgd.) Louis H. Burns, Judge.

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF INTERVENTION OF TANOS HERBERT AND CHARLES BORDEAU—Filed Jan. 26, 1928

To the Honorable District Court of the Eastern District of the State of Louisiana, at New Orleans sitting:

Comes Tanos Herbert and Charles Bordeau, citizens of Jeanerette, Parish of Iberia, State of Louisiana, now temporarily working and residing at Biloxi, Mississippi, and with respect show unto the Court as follows:

That both petitioners are adults and natives and citizens of the State of Louisiana, said petitioners having resided at or near Jeanerette, Louisiana, for over forty years, and their fathers and grandfathers having resided in said Parish since the earlier Canadians came to Louisiana from Canada.

Petitioners would further show unto the Court that they appear in the above styled cause in behalf of themselves, appearing therein for the purpose of requesting of this Honorable Court that they may be permitted to intervene in the above styled and entitled cause as a party complainant adopting each and every allegation of the original bill of complaint herein in behalf of themselves as an original bill of complaint with the same effect and the same purpose as if each and every statement, allegation and charge made in said bill of complaint was herein set forth in behalf of petitioners, and petitioners therefore respectfully show unto the Court as follows:

[fol. 45] First

That petitioners and as well as their fore-parents for many generations back, have for years been engaged in the cultivation of cane in the Parish of Iberia, in the State of Louisiana; that about three or four years ago on account of disease which had been prevalent among the cane industry, and on the cane farms of Louisiana, the production of cane fell off to such an extent that the territory in and around the Parish of Iberia was wholly incapable of sup-

porting a large number of the inhabitants of said territory; that petitioners and the class which they represent endeavored to find work in Louisiana, their home, but were unable to find such work either in the cane industry or in the oyster industry of Louisiana; that the situation of Louisiana with reference to water and proximity of high land to the oyster beds is such that no oysters to any great extent have been packed in Louisiana, but that it has been found to be more economical there to pack and ship oysters caught in Louisiana on certain parts of the Gulf Coast of Mississippi;

That in looking around for a means of livelihood being faced with the absolute necessity of securing work or starving, your petitioners were able to secure employment at Biloxi, Mississippi, where they have since resided, making a living out of the oyster industry in Louisiana and living at Biloxi, Mississippi, with the expectation and thought of returning to their native home, if, at any time, economic conditions there were such as to afford them a means of livelihood; neither petitioners nor any of the class which they represent, have in anywise become citizens of Mississippi, but still claim to and hold their citizenship in Louisiana with the desire to return when opportunity affords.

Second.

That petitioners for over one year past have been in the employment of the Sea Food Company of Biloxi, Mississippi, and for said Sea Food Company have fished oysters [fol. 46] in the State of Louisiana, that petitioners as citizens of Louisiana under the laws of the State of Louisiana, have the right to fish oysters in these waters but these oysters would be valueless to petitioner unless they are able to sell them to the Sea Food Company for the purpose of the removal to the point of the Sea Food Company, or to some other oyster plant in Biloxi, Mississippi, for the reason that there being only two oyster factories in operation in Eastern Louisiana, the supply of oysters at the present time is too great for these factories to can, and were petitioners and the class which they represent, citizens of Louisiana, to continue catching oysters for sale in

Louisiana, the oysters would be valueless as petitioners could find no market for said oysters and no reward for their labor.

Third.

That petitioners are informed that the Sea Food Company has a contract with one L. O. Johnson, Jr., of Biloxi, Mississippi, whereby a large number of oysters each day can be imported by the Sea Food Company to sell said L. O. Johnson, Jr.; that if the Sea Food Company can bring these oysters from the State of Louisiana to the State of Mississippi in compliance with its said contract with said L. O. Johnson, Jr., then the said Sea Food Company will be able to give work to your petitioners and to purchase from your petitioners their catch of Louisiana oysters, thereby yielding to your petitioners *and*, a fair return for their labor and an opportunity to earn a livelihood in the one business outside of the cane business with which they are familiar.

Fourth.

Petitioners would further show unto the Court that the above condition affects at least one thousand persons of French parentage, citizens of Louisiana, who now reside at Biloxi, Mississippi, and that unless the Sea Food Company and other similar situated concerns can obtain oysters in [fol. 47] Louisiana for shipment to Mississippi, that the means of livelihood of these persons will be cut off and there will be dire distress and suffering on the part of this class of persons for the reason that, at this time, there is no work on the plantations in Louisiana and no employment for this class of persons in the present existing oyster factories of Louisiana, that some of the person herein mentioned are employed actually catching the oysters in Louisiana and that the children, wives and older members of the family are employed in opening the oysters in Biloxi, Mississippi, which are caught in Louisiana, and that therefore, petitioners and the class which they represent, are not only vitally interested in the results of the above entitled and numbered cause, but are interested to the extent that their means of livelihood and sustenance depends upon the results of said law suit, this interest in the aggregate amount-

ing to thousands of dollars and being as important to petitioners as it is to the original complainants in the bill of complaint.

Fifth

Petitioners would further show unto the Court that being citizens of Louisiana, that they are entitled to catch oysters in the water of the State of Louisiana, this being an inalienable right of fishing vested in every citizen of Louisiana, and unless these oysters can be transported from the state they will have no commercial value, as the sole purpose for which oysters have been caught in the past on the natural reefs of Louisiana is to sell the same in interstate commerce, and to export the same from the State of Louisiana, very few of said oysters which have been packed, being consumed in the State of Louisiana.

Sixth

Petitioners would further show unto the Court that while they are being deprived of the right to take oysters to Mis- [fol. 48] sissippi from said State, that other more favored citizens of Louisiana are being allowed to ship these raw oysters to points outside of the State for the purpose of being used in restaurants, dining cars and on lunchstands, and therefore, the present law of the State of Louisiana as it is being administered is to discriminate against petitioners and as citizens of said state, and to deny to said petitioners the equal protection afforded by the laws of said state to other citizens; that this condition effects not only those persons who work for the Sea Food Company but effects hundreds of other persons employed by each of the factories in Biloxi, Mississippi, for the reason that unless oysters are brought in to the various factories of Biloxi, it will result in citizens of Louisiana being deprived of their right to fish oysters in Louisiana, and deprived of their right to sell these oysters the result of their labor to the only market that is presently open to said class of persons.

Wherefore, premises considered, petitioners respectfully pray that this their petition of intervention may be received and filed, that petitioners are on behalf of themselves may be given leave to adopt the original bill of complaint herein as their bill of complaint, amended by the facts set forth

in this petition, and that upon a hearing that the preliminary restrained order obtained in the original cause may be extended to all boats in Biloxi operated or manned by petitioners, and that the temporary injunction prayed for in the original bill of complaint may extend not only to the original complainants but to petitioners, and to the factories employing petitioners, and that upon a final hearing of this cause provided petitioners are admitted to intervene herein, that this Honorable Court will perpetually enjoin the defendants named in the original bill of complaint for interfering with petitioners, in their catching of oysters in the State of Louisiana and their disposal of oysters in [fol. 49] interstate commerce outside of said state, and that all process heretofore had upon all the defendants in the original suit herein may be taken as having been had on behalf of these petitioners and if such full and necessary relief as may be had by petitioners is not herein prayed for then for such other, further and general relief as in equity and good conscience petitioners *and* —

(Signed) Tanos Hebert, Charles (his X mark) Bordeau.

Witness: (Sgd.) Bert O. Gunn.

Duly sworn to by Tanos Hebert and Charles Bordeau; jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 50] ORDER PERMITTING PETITION OF INTERVENTION OF TANOS HEBERT AND CHARLES BORDEAU TO BE FILED— Filed Jan. 26, 1928

Coming on to be heard the petition of Louis Hebert and Charles Bordeau for permission to intervene as party complainants herein and the Court having considered the same and it appearing that these parties are citizens of the State of Louisiana and that both said parties are interested in the outcome of this suit and that this interest is as great

as the interest of the parties complainant and that therefore are necessary parties to this litigation;

It is therefore ordered and adjudged that said petition may be filed, and that the said Louis Hebert and Charles Bordeau do have all the rights of a party complainant herein to plead, offer proof and participate herein as if said parties were original complainants.

It is further ordered that the restraining order heretofore issued herein accrue to the benefit of the said petitioners.

Ordered, adjudged and decreed this 26th day of January A. D., 1928.

(Signed) Rufus E. Foster, U. S. Circuit Judge. E. R. Holmes, U. S. District Judge. Louis H. Burns, U. S. District Judge.

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE GRANTING TEMPORARY RESTRAINING ORDER—Filed Jan. 20, 1928.

This day this cause came on to be heard on the application of L. O. Johnson, Jr. and Sea Food Company, a Louisiana Corporation complainants for a Temporary Restraining Order. And it appearing to the Court that the Attorney General of the State of Louisiana has been duly notified of the making of said application. And the Court having considered the same, and being of the opinion that unless a Temporary Restraining Order is granted, Complainants will suffer irreparable harm, injury and damage, in that the Sea Food Company will be prevented from filling the contract which is entered into with Complainant L. O. Johnson, Jr. and that each of said Complainants will sustain great financial damage and that unless said restraining order shall issue, the enforcement officers of the State of Louisiana, would proceed with the enforcement of what is known as the Oyster act being Act No. 258, passed by the Louisiana Legislature, 1926 Session.

It is ordered, adjudged and decreed by the court that the Defendants and each of them be temporarily, pending a hearing or application for a preliminary injunction and are hereby, and enjoined and restrained from interfering with, or preventing the Sea Food Company from taking, catching or acquiring fresh oysters in the shell in the State of Louisiana, for the purpose of filling the contract made exhibit with the original Bill of Complaint, and the said defendants and each of them be, and are hereby restrained and enjoined from proceeding to or taking any steps to enforce said Act No. 258 passed for the Louisiana Legislature, and approved July 14th, 1926, which will in any manner interfere with Sea Food Company catching, acquiring and taking oysters in the shell from the State of Louisiana for the purpose of [fol. 52] shipment of fresh oysters in the shell from the State of Louisiana, and that the said defendants and each of them are restrained and enjoined from prosecuting under said Act the Agents, employees and Servants of the complainants, or either of them while so engaged and be enjoined and restrained from the seeking or attempting to seize or confiscate the property of said complainants or either of them, while so engaged.

It is further ordered, adjudged and decreed that the clerk of this Court issue this Temporary Restraining Order upon the Complainants entering into a good, and sufficient bond with surety to be approved by the Clerk of this Court, conditioned according to law, in the penal sum of Two Thousand ($2,000.00) Dollars, that this restraining order be served in the manner provided by law on the defendants and each of them, and that copy thereof be served upon the Governor of the State of Louisiana.

Ordered, Adjudged and decreed.

(Sdg.) Louis H. Burns, U. S. District Judge, Eastern District of Louisiana.

New Orleans, Louisiana.
January 20th, 1928.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed January 23, 1928

Come L. O. Johnson, Sr., and Seafood Company, complainants, by their attorneys, and show unto the Court that upon the 20th day of January, 1928, the Hon. Louis H. Burns, District Judge, granted the complainants a temporary restraining order, on the original bill of complaint filed in the above-entitled cause, and entered an order organizing a three-judge court to determine complainants' application for an interlocutory injunction, pending the hearing of said cause on the merits, returnable January 26, 1928.

Wherefore the complainants move the court, for the reasons set out in the original bill of complaint and affidavits filed and to be filed in support thereof, to grant an interlocutory injunction, as prayed for in the original bill of complaint, pending the final hearing of this cause.

(Signed) Watkins, Watkins & Eager, Attorneys for Complainants.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER AND EXCEPTION OF DEFENDANTS—Filed Jan. 26, 1928

And now into Court, through undersigned counsel come L. A. Mereaux (incorrectly nominated Louis A. Marks) Sheriff of St. Bernard Parish; Ernest Alberti, Sheriff of Plaquemines Parish; Leander H. Perez, District Attorney for the Parish of St. Bernard and Plaquemines; Percy Saint, Attorney General of the State of Louisiana; Dr. V. K. Irion, Commissioner of Conservation of the State of Louisiana; James N. McConnell, Director, Oyster Division, Department of Conservation of the State of Louisiana; E. J. Haydel, Fred Schouest, and L. R. Cabirac, employees of the Department of Conservation and for answer to the

rule taken by complainants herein, on January 20, 1928, to show cause why the defendants and each of them should not be enjoined and restrained from interfering with or preventing the Sea Food Company from taking, catching or acquiring fresh oysters in the shell in the State of Louisiana, as set forth in the bill of complaint, respond as follows:

Defendants except to the bill of complaint and for cause of exception say that said bill of complaint discloses no right or cause of action, which said exception of no cause or right of action is hereby specially pleaded by defendants herein. Further answering, defendants represent that they are officers of the State of Louisiana, charged with the responsibility of enforcing the laws of the State of Louisiana, *charged with the responsibility of enforcing the laws of the State of Louisiana,* and more particularly Act 258 of 1926, known as the Oyster Law of Louisiana.

It is further alleged that the beds and bottoms of the waters of the State of Louisiana, belong to the State by virtue of her inherent sovereignty and that the oysters raised and grown in said waters and upon said bottoms are the property of the State of Louisiana:

[fol. 55] "Subject to the paramount right of navigation each State owns the land under tide water within its jurisdiction and may appropriate it to the citizens for the taking and cultivating of fish;

"The right of fishery granted by a State to its citizens is a property right and not a mere privilege or immunity of citizenship;

"The constitutional guarantee of privileges and immunities does not vest citizens of one State with an interest in the common property right of fisheries of citizens of another State;

"The right to plant oysters is not a privilege of interstate citizenship and a law granting such right to citizens only is not commerce regulation; • • •

That by the provisions of Act 258 of 1926 the right of property in or — oysters is retained in the State of Louisiana in her sovereign capacity until there shall have been a compliance with each and every condition of said legislative act; and that under said legislative act, do not become an

article of interstate commerce until the title of the State of Louisiana is divested with full compliance with the provisions of said law.

Wherefore, defendants pray that the relief prayed for by complainants be denied and that the defendants be hence dismissed at complainant's costs.

(Signed) Percy Saint, Peyton Sandoz, Michael M. Irwin, John Dymond, Jr., L. H. Perez.

[fol 56] *Duly sworn to by Michael M. Irwin; jurat omitted in printing.*

CERTIFICATE OF COUNSEL

I consider the foregoing exception well founded in law and certify that the same is not filed for purposes of delay.

Attorneys for Defendants, (Sgd.) Michael M. Irwin, Asst. to the Atty. Gen. Percy Saint. Peyton Sandoz. Michael M. Irwin. John Dymond, Jr. L. H. Perez.

[fol. 57] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ERNEST DESPORTE, JR., ON BEHALF OF PLAINTIFFS—Filed January 26th, 1928

[Title omitted]

Personally appeared before me, the undersigned authority a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Ernest Desporte, Jr., who being by me first duly sworn did depose and say:

That he is an adult resident of the City of Biloxi, Mississippi, and is engaged in said city in the packing of oysters and in the selling of raw oysters for the past fifteen years, and is thoroughly familiar with the raw oyster business as well as the packing business, and

That affiant knows of his own personal knowledge that when the so called Louisiana law went into effect on the first day of January, 1928, that the State of Louisiana commenced at once a most rigorous inforcement of this law

in so far as it effected oysters coming into Biloxi, Mississippi, for canning in the factories there and for sale in the raw shell at Biloxi; that said State established boats which patroled the waters of the Mississippi Sound and stopped any Biloxi boat in said waters for the purpose of ascertain-[fol. 58] ing if said boats were violating the laws in any respect;

That at the same time from the personal observation of affiant and from information conveyed to affiant by others, affiant knows that no attempt whatsoever was made by said officers to inforce said law in so far it effected the shipping of raw oysters by raw oyster dealers in New Orleans, who have since the first day of January been engaged in shipping these raw oysters in the shell without interruption, and in increasing amounts from the State of Louisiana to various parts of the United States;

That this raw oyster business in New Orleans is in direct competition with affiant's business and with the business of citizens of the State of Louisiana who own or are interested in the oyster factories and other businesses in the State of Mississippi.

That in addition to the above when persons residents of Biloxi licensed in the State of Louisiana to catch oysters in the State of Louisiana have attempted to catch Biloxi oysters in Louisiana for the purpose of selling same in New Orleans, they have been met with a boycott established by the New Orleans dealers for the reason that if any small amount of the Louisiana marsh oysters are carried into New Orleans it will speedily flood the New Orleans market, as the demand for raw oysters, while increasing, is wholly insufficient to take up the enormous catches that the Louisiana oyster bottoms will yield;

Affiant further says that at the present time in the Parishes of St. Bernard and Plaquemine there is a possibility of catching from five to ten thousand barrels of oysters a day without in the slightest manner of injuring the oyster beds, but that the two factories operating in these Parishes cannot use in excess one thousand barrels of oysters a day; that if the balance of the oysters are allowed to remain at the bottom of the water that they will not only not increase [fol. 59] in numbers but on account of the rapid growth of oysters in Louisiana will soon deteriorate and die from

inability of the water to sustain them, that, therefore, unless these oysters are caught by the Sea Food Company and others, that they will become wholly useless to the citizens of Louisiana as there is not now any market for the oysters within the territory where they are found; that because of this rapid growth in the past, many oyster reefs in Louisiana have become impossible of yielding marketable oysters, and for various reasons have died and gone out of existence as oyster reefs. In some parts of the State these reefs are found which will yield millions of barrels of dead oyster shells.

Affiant further says that for the above reason there is no necessity for the conservation of Louisiana of the oyster clutch, there being millions of barrels of large oyster shells, that is, dead shells that can be at any time utilized for this purpose.

Affiant further states that the State of Louisiana is selling dead oyster shells from these reefs at the price of two cents per cubic yard, whereas, if the shells are taken up with the live oysters in same, that the tax alone will yield twenty-one cents per cubic yard;

Affiant further says that the sole and only purpose of this law is to compel the canning of oysters in Louisiana; that at this time this would not only work a hardship on the Sea Food Company, the complainant herein, but that this hardship would be so great as to deprive the Sea Food Company of the possibility of profit for the reason that the general conditions governing the canning of oysters in Biloxi is so much more favorable than the conditions governing the canning of oysters in Louisiana; that these oysters can be canned in Louisiana only at a great economic loss;

Affiant further says that after the oyster is opened in [fol. 60] Louisiana for canning purposes, that the entire oyster as well as the shell is either exported from the State or else the shell part of the oyster is utilized for some purpose of small, if any, economic value.

Affiant further says that the Mississippi oyster reefs are situated in the Mississippi Sound near or adjacent to the Channel from Pearl River, and that, at this time, the United States Government intends to construct a spillway at Bannecarre, Louisiana, the effect of which will be in flood times

to turn loose billions of gallons of fresh water into the Mississippi Sound, seriously threatening the destruction of the Mississippi oyster reefs; that should this work be done, the entire oyster industry in Mississippi will be destroyed in order that sound protection be given the City of New Orleans, resulting in the removing of considerable people from the Mississippi Coast, where they are pleasantly and profitably situated at this time, to a place of almost intolerable living in Louisiana.

And further affiant sayeth not.

(Signed) E. Desporte, Jr.

Sworn to and subscribed before me, this the 24th day of January, A. D. 1928. (Signed) A. S. Mevelo, Notary Public. (Seal.)

[fol. 61] AFFIDAVIT OF MRS. ANNA R. HEIDENHEIM ON BEHALF OF PLAINTIFF—Filed January 26, 1928

(The exhibits attached to this affidavit transmitted in the original by order of Court.)

[Title omitted]

Personally appeared before me, the undersigned authority, A Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Mrs. Anna R. Heidenheim, who being by me first duly sworn did depose and say:

That she is Secretary and Treasurer of the Sea Food Company, a corporation organized under the laws of the State of Louisiana, and also is Manager of the plant of the Sea Food Company at Biloxi, Mississippi, and she is very familiar with the oyster business and particularly with the oyster industry of Louisiana;

Affiant further says that the Sea Food Company of Louisiana is domiciled in New Orleans, Louisiana, and that the charter attached to the bill of complaint in the above styled cause as an exhibit is a copy of the charter under which said company operates; that the contract annexed to the bill of complaint as an exhibit was entered into by and between the Sea Food Company and L. O. Johnson,

and that said contract is a valid, legal binding obligation on the Sea Food Company, which the Sea Food Company will be unable to fulfill unless it is permitted to secure oysters from the State of Louisiana.

Affiant further states that she has attempted on behalf of her company to obtain permission from the officials of the State of Louisiana to remove oysters from Louisiana, having requested such permission in writing and offered to pay the taxes due on the schooners employed by her, the check constituting this offer and a copy of the letter refusing this permission being attached to this affidavit and marked Exhibits "A" and "B";

That unless affiant's company is able to fish oysters in [fol. 62] the State of Louisiana and remove same from the State of Louisiana, it will be unable to carry out the contract with said Johnson, and will suffer great damage thereby, which damage will exceed the sum of Three Thousand Dollars ($3,000.00), for the reason that the Sea Food Company will have idle for a large number of months schooners and equipment possessed by it and used by it in the operation of its business;

Affiant further says that the property used in and about the operation of its and the said L. O. Johnson plant largely exceeds the sum of Seventy Five Thousand Dollars ($75,000.00), and that the greater part of this value will be destroyed if the affiant's company and the said L. O. Johnson are prevented from packing and canning oysters in Mississippi, which it lawfully acquires in Louisiana;

Affiant further states that the Sea Food Company and its predecessors have operated at Biloxi, Mississippi, for a period of over fifty years, during which time it has assisted in building up a great canning industry at Biloxi, Mississippi; that a great deal of the wealth going into this canning industry has eminated from New Orleans, Louisiana, the reason for the New Orleans Investors selecting Biloxi as a canning point being that Biloxi has a wonderful supply of water fit for canning purposes, and also a healthful, pleasant climate which attracts the type of workers most needed in the canning business; that these reasons together with the further reason that Biloxi is on an open body of water only forty or fifty miles from the Louisiana oyster beds has made it more profitable for

owners of factories to operate in Biloxi than in New Orleans, or other Louisiana towns;

Affiant further says that the Louisiana communities lying near to the oyster beds can only be reached through bayous and canals largely owned by private individuals, and furthermore these communities other than New Orleans are not capable of supplying the needed labor in the quantity and in the seasons required by one canning oysters; that the reason for the absence of labor is a physical reason, that is, the lower reaches of Louisiana [fol. 63] being low and surrounded by marshes where mosquitoes and other insects breed in large numbers and their presence disturbs the upbuilding of large communities; that therefore while St. Bernard and Plaquemine Parishes contain almost inexhaustible oyster beds, it has never been found profitable to can oysters in these Parishes, only one or two canneries operating therein at this time;

Affiant further says that her company can buy oysters in Louisiana in the public market in sufficient quantities to satisfy the demands of the contract entered into between L. O. Johnson and her company, but that by reason of the Louisiana law she is unable to export these oysters, and should her company attempt to can the oysters in Louisiana it can only be done at a loss involving thousands of dollars;

Affiant further states on information and belief that the law now complained of is now being openly violated by shippers of raw oysters who are allowed to ship oysters in large quantities to numerous persons without removing the shell, the whole purpose of said law being to compel canners of oysters to locate their canning factories in Louisiana.

And further deponent sayeth not.

(Sgd.) Anna R. Heidenheim.

Sworn to and subscribed before me, this the 18th day of January, A. D. 1928. (Sgd.) Antonia Perisect, Notary Public.

[fol. 64] AFFIDAVIT OF LOUIS BRAUN, ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Louis Braun, who being by me first duly sworn did depose and say:

That he is an adult resident citizen of Biloxi, Mississippi, thirty-seven years old and has resided in Biloxi all of his life; that he is engaged in the crushing of oyster shells into chicken feed, and also is very familiar with the oyster packing industry both in Mississippi as well as in Louisiana;

Affiant further says that at this time there *is* only two oyster canner*y*s located in the Parish of St. Bernard and Plaquemine in the State of Louisiana, on the East bank of the Mississippi River, and that these conner*y*s are located at the head of a private canal;

Affiant further says that unless a packer is fortunate enough to secure entrance to the oyster beds in Louisiana from the Mississippi River through some private canal, that he is precluded from packing oysters for the reason that no suitable water supply can be found near the oyster beds, and without a water supply oysters cannot be canned;

Affiant further says that in no point in Louisiana can oysters be canned with the same ease as in Biloxi, Mississippi, for the reason that Biloxi has a fine supply of water and a wonderful labor market, and for this reason Biloxi has developed a large oyster industry;

Affiant further says that Louisiana is not in present need of oyster shells for chicken grit as the State has nu-[fol. 65] merous reefs of dead oyster shells where millions of barrels of shells can be cheaply and profitably obtained;

Affiant further states on information and belief that oysters in large quantities can be bought on the public markets of Louisiana and that some of these oysters so bought are shipped in interstate commerce in the hull, this being what is known as the raw oyster business, and oysters are only being prevented from being shipped from Louisiana where the same are intended to be canned;

Affiant further says that the effect of the inforcement of the Louisiana oyster law will only be to compel the persons dwelling in Biloxi, Mississippi, to move to Louisiana where the oysters will be canned and shipped from the state in the same manner that they would be shipped were they canned in Biloxi; that no purpose of conservation of food to any one in Louisiana would be served by the inforcement of said law, for the reason that with the exception of the raw oyster business the sole purpose of catching and canning oysters is that the same may be shipped in interstate commerce to all of the states of the union;

Affiant further says that the supply of oysters in Louisiana is inexhaustible, and that the people of Louisiana do not need five percent of the oysters that can be produced in Louisiana, and that therefore oysters are a subject of Bar—and sale on the open market in Louisiana and the whole of the oyster shell after oysters are packed in cans are crushed into grit and is shipped from the State of Louisiana;

Affiant further says that the officials of the State of Louisiana are now patrolling the waters of that state and that any violation of the Louisiana law will result in the imprisonment of the violators and the confiscation of their equipment.

And further deponent sayeth not.

(Sgd.) Louis Braun.

Sworn to and subscribed before me, this the 18th day of January, A. D. 1928. (Sgd.) Eugene Peresicl, Notary Public.

[fol. 66] AFFIDAVIT OF R. H. CHINN, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, R. H. Chinn, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Mississippi, and has lived in Biloxi, Mississippi, and been engaged in the oyster business for more than ten years past. That at the present time he is the manager of an oyster packing plant in Biloxi, Mississippi, and as such manager has supervision and control of its boats and is intimately acquainted with the oyster business as it is now conducted in Mississippi.

Affiant knows that this oyster business in the South has its origin in Biloxi and that for years past the main sum of this business was done in Biloxi, Mississippi, there being packed there countless thousands of barrels of oysters that were caught in Louisiana, these oysters being caught in Louisiana by the native fishermen, from Louisiana, as well as fishermen from Biloxi. The oysters after being caught in the waters of the State of Louisiana would be sold to boats operated by the large factories or would be by the boats catching the oysters directly brought to Biloxi and packed and canned in Biloxi.

Affiant further says that the reason for the canning of these oysters in Biloxi, Mississippi, was due to the fact of the plentiful supply of labor in Biloxi and the excellent water supply to be found there, a condition that cannot be found at any place in St. Bernard or Plaquemine Parishes in Louisiana where oysters are found or any point adjacent thereto. That aside from the fact Biloxi is situated only about forty or forty-five miles from the Louisiana oyster [fol. 67] grounds over an open expanse of water with the free right of travel vested in every one engaged in commercial pursuits, whereas in order to get to high ground in Louisiana from the marshes it is necessary either to go to one of the mouths of the Mississippi River or to pass into the Mississippi River by mean of a private canal.

Affiant further says that there are millions of barrels of oysters in Louisiana more than is necessary for actual consumption of the people of Louisiana, and that there are also millions of barrels of reel shells situated in the state that can be and are being used for manufacturing chicken feed; however, the vast proportion of all oysters caught in Louisiana, as well as all shells ground there, are shipped out of the state and the effect of the enforcement of the present Louisiana law would be not in conserving to the people of Louisiana a food supply but rather to compel the

manufacture in Louisiana of a food supply that will be shipped by the manufacturers in commerce to all parts of the world.

Affiant further says that if the company he represents, which is a Louisiana corporation, is compelled to can and pack all oysters caught by it in the State of Louisiana that it will only do so at a great loss and although these oysters can be and are being bought and sold on the open market in Louisiana in ordinary commerce, his company is being deprived of large profit in the packing of oysters by reason of the law which prohibits these oysters being canned at any point other than in the state of Louisiana.

Affiant further says that the oyster business has been an important element of commerce between the states of the South and that it has arrived at its present state after years of efforts on the part of those persons who are engaged in it at this time and one of the effects of the enforcement of the Louisiana law prohibiting the export of oysters will be to totally destroy and disintegrate the structure of this commercial industry that has been builded up after years of efforts and expenditures.

Affiant further says that at this time his company has boats lawfully empowered to catch oysters in the state of Louisiana which boats are catching oysters and selling same on the open market in Louisiana. That these oysters could be sold to the Sea Food Company or any other person [fol. 68] who has a contract to these oysters from the state of Louisiana, and the only reason why the Sea Food Company and the ohnson Fish & Oyster Company are prevented from fulfilling their contract with reference to the purchase and sale of certain amounts of oysters in Biloxi is that the officials of the State of Louisiana prevent the shipment from the state of the oysters that are now being lawfully bought and sold on the open market of the state of Louisiana, wholly treated on said market as an object of commerce.

Affiant further says, upon information and belief, that, with the knowledge and approval of the Conservation Commission of Louisiana, oysters in their natural state in the shells are being shipped from the state of Louisiana to numerous persons without the state, these oysters being used in that part of the oyster business known as the raw

oyster business which in itself is an object of considerable commerce between the states, and affiant is informed and believes that quantities of these oysters in the shells are shipped from the state of Louisiana to other states for use in restaurants, lunch stands and on railroad dining cars, and that no effort whatsoever is being made by the officials of the state of Louisiana to prevent shipment of these oysters, it being the sole intention and thought of said officials and the sole purpose of said law to prevent the shipment from the state of Louisiana to other states of oysters that are to be steamed and canned in factories so that all persons operating factories for the purpose of opening and canning oysters may be compelled to locate these factories in the state of Louisiana.

Affiant further says that they would be allowed to catch in Louisiana any quantity of oysters and to sell these oysters to any person whatsoever, there being no restriction on the amount of catch or the persons to whom they are sold provided the oysters are thereafter manufactured in the state of Louisiana and after they are manufactured affiant says that these oysters and all by-products of same can be wholly shipped from the state of Louisiana.

Affiant further states that the enforcement of this law will result in the dislocation of the business in Mississippi that involves more than million dollars of capital and the means of livelihood of more than five thousand people.

[fol. 69] Affiant further says that at this time there is not more than one or two factories operating in Louisiana in the parishes of St. Bernard and Plaquemine, and that although during the past fifteen years numerous factories have been established in these parishes no such factory has continued in existence up to this time under a successfull management, but that all persons heretofore engaged in that business in the portion of Louisiana mentioned have found the business unprofitable for the reason hereinabove set forth.

And further affiant sayeth not.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me, this the 18th day of January A. D. 1928.

(Sgd.) Antonio Perisict, Notary Public.

[fol. 70] AFFIDAVIT OF L. O. JOHNSON JR., ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted.]

Personally appeared before me the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, Jr., who being by me first duly sworn did depose and say:

That he is an aduly resident of Biloxi, Mississippi and is engaged in the buying and selling of oysters both in a raw and canned state in Biloxi under the firm styled of Johnson Fish & Oyster Co., that he is the same individual mentioned in the above bill of complaint as one of the complainants and is the same person who has heretofore entered into a contract with the Sea Food Company, a Louisiana Corporation, which contract is annexed to said bill of complaint as a- exhibit thereto; that said contract is a valid, binding legal engagement which he has undertaken and agreed to ca-ry out and which he will be able to carry out unless prevented by the enforcement of the laws of the State of Louisiana prohibiting the export of oysters from the State of Louisiana.

That if said law is so enforced as to prevent delivery to him of the oysters mentioned in said contract said affiant will be damaged greatly, which damage will be in excess of the amount of Three Thousand Dollars, and which damage will arise for the following reason.

Affiant being engaged in the packing of oysters at Biloxi, Mississippi; has a great amount of equipment such as, boats, tackle, packing houses, proiperty and money invested in said business, the amount of his investment and that of the Sea Feed Company totalling over $75,000.00, and he expects to realize from the sale of said oysters a profit largely in excess of the amount of three thousand dollars.

[fol. 71] Affiant further states that oyster Business in the South has largely been builded up in and about Biloxi due to the favorable location of Biloxi with reference to the oyster beds as well as the plentiful water supply in Biloxi, and the favorable location of same with reference to the health of the inhabitants thereof; that by reason of the

excellent water supply and the large number of people who have gathered in Biloxi and who have become schooled in the packing of oysters oysters can be canned and packed in Biloxi to a greater advantage than at any other point in the South, and for the past fifty years the vast majority of oysters caught in Louisiana by native fishermen, as well as fisherment from the Biloxi have been packed in Biloxi, although a great many of the owners of factories are either from Louisiana or receive their capital from this state.

Affiant further states that this business has been continuous and uninterrupted and has resulted in an investment of hundreds of thousands of dollars at Biloxi and in the residence of four or five thousand people who depend solely upon this business and the shrimp business as a means of livelyhood.

Affiant further says that although numerous persons have attempted to can oysters in Louisiana, due to an almost inexhaustable supply of oysters, they have failed in this endeavor due to the fact that they are unable to succeed in securing a suitable location for their factories and locations where they are able to get fresh water as well as a supply of needed labor in opening and canning oysters that naturally has been impeded in the building of large communities in St. Bernard and Plaquemine Parishes on account of the low lying land and which results in the breeding of various insects detrimental to human existence, and has also impeded the operation of factories there by reason of the inability to get the proper supply of pure water; the only water that can be obtained being on the banks of the Mississippi River and these banks can only be reached by means of private canals, the number of which are limited, but unless a factory owner possess one he is unable to get his products from the oyster beds to his packing plant. That for this reason oysters have not been looked upon in Louisiana as a food supply needed for its local citizens, [fol. 72] but rather as an object of commerce to be bought and sold in the open ma-ket with its destination beyond the outside world, both in the raw and canned state.

For this reason the vast majority of oysters caught in Louisiana have always been bought by factory men in Biloxi and transported to Biloxi where they were canned and shipped to all points of the United States. That this

business is constantly increasing and oysters are valuable to the people of Louisiana not as a local food supply but as an object of commerce that brings great quantities of money into the state, but although the state has constantly assisted in the upbuilding of factories in this state it has been unsuccessful due to the fact that local conditions were against the successful operation of canning factories.

Affiant being in the oyster business is also familiar with the oyster business both in Biloxi as well as Louisiana, and knows that the present existing law is inforced only against persons bring- oysters from Louisiana to Mississippi for the purpose of canning, but it is not inforced against persons shipping oysters from the state of Louisiana to the outside world in their natural state for the purpose of being opened and served as raw oysters in restaurants, railroad trains and oyster counters, etc.; that a very large and profitable business of this nature exists in Louisiana and affiant is informed and believes that there is now going on to a large extent, shipments being made continuous outside the borders of Louisiana, and this with the knowledge and approval of the Conservation Commission of Louisiana.

Affiant further states that under the present existing oyster law raw oysters cannot be shipped from Louisians and canned in an outside state. The same result is obtained by the canning of oysters in Louisiana and the shipment of the canned oysters from the State and the crushing of the shells in Louisiana and the shipment of the crushed shells from the State. That no purpose of conservation of food or of shells is served by said law, but its only purpose is to prevent the shipment of the oysters from the state to be canned outside of the state, thereby forcing [fol. 73] persons owing canning factories to locate in Louisiana at a great disadvantage to them and of great losses in money and profit to these canners.

Affiant further states that the Sea Food Company will be able to purchase oysters in an unlimited quantity from persons having legal right to catch them in Louisiana, but that at the present time the waters of the State of Louisiana, being patrolled by representatives or officials of the Louisiana Conservation Commission who threaten to arrest and imprison officers, officials or employees of the Sea

Food Company and to confiscate their boats if any violation of the law is attempted by the removal of oysters lawfully purchased and acquired in Louisiana.

Affiant further states that oysters sold in Biloxi are not only caught in Louisiana by citizens of Louisiana, but are caught by citizens of Louisiana who in turn sell their catches to boats from Mississippi without any discussion and in unlimited quantities, but that these oysters when bought are being prevented from removal from the state of Louisiana to the State of Mississippi.

And further affiant sayeth not.

(Sgd.) L. O. Johnson, Jr.

Sworn to and subscribed before me, this 18th day of January, A. D. 1928. (Sgd.) Antonio Peresict, Notary Public.

[fol. 74] AFFIDAVIT OF THEODORE GRILLIS, FILED ON BEHALF OF PLAINTIFFS, JANUARY 26, 1928 (EXHIBITS ATTACHED TO THIS AFFIDAVIT TRANSMITTED IN THE ORIGINAL BY ORDER OF COURT)

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named Theodore Grillis, who, by me being duly sworn, makes oath that he is the proprietor of the Grillis Grill, situated in West Capitol Street, Jackson, Mississippi, wherein he operates a restaurant and solicits the patronage of the public; that he has for probably more than eighteen months served in his restaurant oysters on the half shell, which he receives in barrels in the whole shell from dealers and packers in New Orleans in the State of Louisiana.

Affiant states that there is hereto attached a photograph of his restaurant taken from the exterior, showing oysters on the half shell on the inside of the show window kept on ice; that said oysters are what is known as Louisiana Bayou Cook Oysters, a very choice variety of Louisiana oysters, which are grown and shipped to affiant in Jackson, Missis-

sippi, by American Railway Express from New Orleans in the State of Louisiana; that just inside of said show window is a sign, conspicuously posted, upon which is written the following language: "Louisiana Bayou Cook Oysters on the Half Shell." That affiant is now and has been continuously solicited by New Orleans packers and dealers by price lists, wherein they have sought to sell him oysters in the shell to be shipped from New Orleans in the State of Louisiana, and that this course of business existed prior to January 1, 1928, and has continued without interruption since such date; that he has continuously, since the first of January, 1928, in the due course of business, procured from packers and dealers in New Orleans, Louisiana, shipped to him by express, oysters in the shell, which he has in due course of business sold to his customers in his restaurant, the photograph of which is hereto attached and marked Exhibit 1, the same being asked to be considered as if set out herein in full in words and figures.

Affiant states that he gets several barrels of oysters in the shell per week, shipped to him by dealers in New Orleans, Louisiana, to Jackson, Hinds County, Mississippi; that the oysters which he gets are merely measured by his requirements; that he could buy from such source oysters in the [fol. 75] shell by the car load per day, without restriction or limitation. Affiant states that upon the morning of January 23rd, 1928, in due course of business, he received from Paul Ziblich Company, Inc., of New Orleans, Louisiana, one barrel of raw oysters; that said oysters came to him by express; that upon the morning of January 24th, 1928, he received from the said Louisiana corporation two barrels of raw oysters in shells in interstate commerce by the American Railray Express Company; that the original invoice is hereto attached and marked Exhibit 2, the same being asked to be considered as if set forth herein in full in words and figures; that the American Railway Express receipt therefor, with charges thereof, is hereto attached and marked Exhibit 3, the same being asked to be considered as if set forth herein in full in words and figures.

Affiant states that he believes he could have gotten a car load or raw oysters in shells contained in barrels or sacks as readily and easily as the foregoing purchases were made. Affiant states that the oysters received by him on the morn-

ing of January 24th, 1928, as were other oysters, were shipped in barrels containing a top set down within the barrel; that the top is made of wood, and on the top of the barrel there was contained, and on top of all the barrels shipped to him, there is usually contained, the following indorsement: "The Original Bayou Creek Oysters, packed by Paul Ziblich Company, Inc., New Orleans, La., State Board of Health Permit No. 36."

Affiant states that he will endeavor to have made a photographic copy of the top of said barrel with the indorsement hereinbefore set out, and if he can do so, the same will be made Exhibit 4 to this affidavit, and the same is asked to be considered as if set out herein in full in words and figures, affiant attaches exhibits and letter dated Jan. 9th, 1928 from said Zibilich Co. Inc.

(Signed) Theo. Grillis.

Sworn to and subscribed before me, this 24th day of January, 1928. (Sgd.) M. J. Conerly, Notary Public. (Seal.)

[fol. 76] AFFIDAVIT OF DOMINECK CARAVELLA, ON BEHALF OF PLAINTIFFS—Filed January 26, 1928

STATE OF MISSISSIPPI,
County of Warren:

Personally came and appeared before me, the undersigned, a Notary Public, in and for Warren County, Mississippi, the undersigned, Domineck Caravella, manager and proprietor of the New Orleans Oyster House, in the City of Vicksburg, Mississippi, who, having been duly and legally sworn, makes the following statement, to-wit:

That he is now, and has been manager and proprietor of the New Orleans Oyster House, in said county and state, since, and long prior to, the 1st day of January, 1928; that, in connection with his business, the operation and running of the New Orleans Oyster House, he serves over the counter oysters on the half shall, and has done so continuously since the 1st day of January, 1928.

That oysters in the shell are usually obtained by him from the city of New Orleans, Louisiana, or other places in the

state of Louisiana, and they are shipped to him either by freight or express, in barrels or sacks, from individuals, firms or corporations engaged in business in the state of Louisiana, and that they have been continuously so shipped to him from said state of Louisiana, since the 1st day of January, 1928.

Affiant further states that the supply of oysters in the shell shipped to him or to the New Orleans Oyster House, of which he is the manager and proprietor, has been obtained from the source aforesaid, since the 1st day of January, 1928, up to the day of the execution of this affidavit, without interruption, and that he is able and has been able, since said date to obtain oysters in the shell, in any quantity from the state of Louisiana.

[fol. 77] Affiant further states that, since the 1st day of January, 1928, he has had no trouble whatsoever in obtaining oysters in the shell in small or large quantities, from the state of Louisiana, and that the last shipment was received on the 23rd day of January, 1928.

(Sgd.) D. M. Caravella, Manager & Proprietor of the New Orleans Oyster House, Vicksburg, Mississippi.

Sworn to and subscribed before me this 24th day of January, 1928. (Sgd.) Jos. J. Gerache, Jr., Notary Public. My commission expires on the 30th day of December, 1931. (Seal.)

[fol. 78] AFFIDAVIT OF B. C. YOUNG ON BEHALF OF PLAINTIFF—Filed January 26, 1928

STATE OF MISSISSIPPI,
County of Warren:

Personally came and appeared before me, the undersigned, a Notary Public, in and for Warren County, Mississippi, the undersigned, B. C. Young, manager of the Carroll Hotel, in the City of Vicksburg, Warren County, Mississippi, who, after having been duly and legally sworn, makes the following statement, to-wit:

That he is now and has been manager of the Carroll Hotel, in the City of Vicksburg, Warren County, Missis-

sippi, since, and long prior to, the 1st day of January, 1928; that, in connection with said hotel, a restaurant and dining room has, since the 1st day of January, 1928, been run and operated under the general supervision of affiant.

That fresh, raw oysters in the half-shell are habitually used and served to customers in the restaurant, connected with the hotel, and have been so used and served continuously since the 1st day of January, 1928.

That said oysters are usually obtained from the city of New Orleans,, Louisiana, or from other places in the state of Louisiana, and that they are shipped to said hotel either by freight or express in barrels or sacks from individuals, firms or corporations in business in the state of Louisiana.

That the supply of oysters in the shell so shipped to said hotel has been obtained from the source aforesaid since the first day of January, 1928, up to the date of the execution of this affidavit, without interruption and that the hotel is able to get the oysters in the shell in any quantity at any time desired; that they are shipped in the barrel or by the car load, as the exigencies of the business require. [fol. 79] Affiant further states that, since the 1st day of January, 1928, he has had no trouble whatsoever in obtaining oysters in the shell in small or large quantities and that the last shipment was received on the 22nd day of January, 1928.

(Sgd.) B. C. Young, Manager Carroll Hotel, Vicksburg, Mississippi.

Sworn to and subscribed before me, on this the 24th day of January, 1928. (Sgd.) Mrs. Netlydell W. Stevens, Notary Public. My commission expires on the 21st day of April, 1931.

[fol. 80] Affidavit of Pete Messina Filed on Behalf of Plaintiff—Filed January 26, 1928

State of Mississippi,
County of Warren:

Personally came and appeared before me, the undersigned, a Notary Public, in and for Warren County, Mississippi, Pete Messina, manager and proprietor of Mes-

sina's Restaurant, in said county and state, who, having been duly and legally sworn, makes the following statement, to-wit:

That he is now and has been since the first day of January, 1928, manager and proprietor of Messina's Restaurant, in said county and state and the city of Vicksburg, thereof; that, in connection with his business, the operation and running of the Messina's Restaurant, he serves over the counter oysters on the half shell, and has done so continuously since the 1st day of January, 1928.

That — in the shell shell are usually obtained by him from the city of New Orleans, Louisiana, or other places in the state of Louisiana, and they are shipped to him either by freight or express, in barrels or sacks, from individuals, firms or corporations engaged in business in the state of Louisiana, and that they have been continuously so shipped, to him from said state of Louisiana, since the 1st day of January, 1928.

Affiant further states that the supply of oysters in the shell shipped to him or to Messina's Restaurant, of which he is the manager and proprietor, has been obtained from the source aforesaid, since the 1st day of January, 1928, up to the day of the execution of this affidavit, without interruption, and that he is able and has been able, since said date to obtain oysters in the shell, in any quantity from the state of Louisiana.

Affiant further states that, since the 1st day of January, 1928, he has had no trouble whatsoever in obtaining oysters in the shell in small or large quantities and that the [fol. 81] last shipment was received on the 24th day of January, 1928.

(Sgd.) Peter P. Messina, Manager and Proprietor of Messina's Restaurant, Vicksburg, Mississippi.

Sworn to and subscribed before me, on this the 24th day of January, 1928. (Sgd.) Jos. J. Gerache, Jr., Notary Public. (Seal.) My commission expires on the 30th day of December, 1931.

[fol. 82] AFFIDAVIT OF CHARLIE CHAGARE ON BEHALF OF PLAINTIFF—Filed January 26, 1928

Affidavit

STATE OF MISSISSIPPI,
County of Lauderdale:

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, Charlie Chagare, who, by me being first duly sworn, on his oath makes affidavit and says: That he is one of the proprietors of the Meridian Sandwich House and Cafe, a restaurant in the City of Meridian, Lauderdale County, Mississippi; that fresh, raw oysters on the half-shell are habitually used and served to customers in said restaurant; that these oysters are usually obtained by said restaurant in the shell in barrels by express from S. M. Fucich & Son, oyster dealers, doing business at 532-534-536 Dumaine Street, in the City of New Orleans, Louisiana, and are shipped to said restaurant direct from the City of New Orleans, Louisiana; that these raw oysters in the shell have been obtained from such source since the first day of January, 1928, up to date, without interruption; that these raw oysters in the shell, to be served on the half-shell, can be obtained from such source in any quantity and at any time desired, that is, in such number of barrels as the exigencies of business require.

(Signed) Charlie Chagare.

Sworn to and subscribed before me, this 24th day of January, 1928. (Signed) Chas. A. McIntosh, Notary Public. (Seal.) My commission expires August 13, 1930.

[fol. 83] AFFIDAVIT OF K. JOSEPH ON BEHALF OF PLAINTIFF—Filed January 26, 1928

STATE OF MISSISSIPPI,
County of Forrest,
City of Hattiesburg:

Personally appeared before me, the undersigned authority in and for the state, county and city aforesaid K.

Joseph, who by me being first duly sworn states on oath that he is the manager of the Blue Bird Cafe in the said City of Hattiesburg and that he has been engaged in the cafe business for many years. Affiant states that fresh raw oysters on the half shell or shell oysters, are habitually used and served to customers in his Cafe and that since the first of January, 1928, he has continuously offered sayd oysters for sale to the public.

Affiant further states that he obtains these oysters from S. M. Fricich & Son, located in the City of New Orleans, Louisiana, and that he has always gotten his oysters out of New Orleans, Louisiana. Affiant states that these oysters are shipped to him by express on short notice, two sacks at a time. Affiant states that prior to and since the first day of January, 1928, he has had no trouble with getting oysters out of New Orleans and that he could buy the oysters in any quantity that the exigencies of his business required.

Witness my signature this the 23rd day of January, 1928.

his
(Signed) K. Joseph, X Manager.
mark

Sworn to and subscribed to before me this the 23rd day of January, 1928. (Signed) T. L. Hays, Notary Public. (Seal.)

[fol. 84] AFFIDAVIT OF E. J. MISTICOS, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928, and Exhibits Attached

(The Exhibits attached to this affidavit transmitted in the original by order of Court.)

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named E. J. Misticos, who, by me being duly sworn, makes oath that he is one of the managers of the Belmont Cafe, situated on

East Capitol Street in Jackson, Mississippi. Affiant states that the Belmont Cafe is a restaurant where the public is invited to obtain good and wholesome food; that ordinarily it does not serve oysters on the half shell, though it serves raw oysters; that oysters in the half shell are served and offered for sale in the City of Jackson at the Grillis Grill, where a special feature of oysters on the half shell is made, and at the Edwards Hotel in Jackson, Mississippi, the principal hotel in Mississippi. Affiant states, however, that if it desired to handle Louisiana oysters in the half shell, it would have no trouble, since the first day of January, 1928, or prior thereto, in obtaining them from the various dealers in the City of New Orleans in the State of Louisiana; that the various dealers in sea foods in the City of New Orleans constantly send out price lists to the Belmont Cafe, soliciting its orders for sea foods to be shipped from New Orleans in the State of Louisiana to Jackson, Mississippi, including raw oysters in the shell; that the Belmont Cafe could purchase a car load a day if it had any desire for them or was able to pay for them.

Affiant states that the New Orleans Fish & Oyster Depot in New Orleans, Louisiana, has a regular agent in the City of Jackson, Mississippi, who calls on the trade, and regularly calls on the Belmont Cafe, soliciting its orders for sea food, including raw oysters in the shell. That upon the 16th day of January, 1928, affiant received from the New Orleans Fish & Oyster Depot a letter soliciting its business, a copy of which letter is hereto attached and marked Exhibit 1, the same being asked to be considered as if set out herein in full in words and figures.

Affiant states that on the 20th day of January, 1928, by telegram, it ordered from Paul Bougon Fish & Oyster [fol. 85] Company, a Louisiana corporation, domiciled in New Orleans in the State of Louisiana, one barrel of oysters in the shell for shipment January 23rd, 1928. Affiant states that promptly on the morning of January 24th, 1928, the American Railway Express Company delivered to the Belmont Cafe from the said Louisiana corporation one barrel of raw oysters in the shell, which had been transported from the City of New Orleans in the State of Louisiana to Jackson, Mississippi, in interstate commerce; that the invoice for said oysters is hereto attached and marked Ex-

hibit 2, the same being asked to be considered as if set out herein in full in words and figures. That said raw oysters in the shell were obtained in a barrel, and that upon the barrel were two tags, showing the consignor and consignee, one of which tags is hereto attached and marked Exhibit 3, and the other of said tags is hereto attached and marked Exhibit 4; all of said exhibits hereto attached being asked to be considered as if set out herein in full in words and figures. That the duplicate express receipt from the American Railway Express Company is hereto attached and marked Exhibit 5, and is asked to be considered as if set out herein in full in words and figures.

(Signed) E. J. Misticos.

Sworn to and subscribed before me, this 24th day of January, 1928. (Signed) Louise Melton, Notary Public. (Seal.)

[fol. 86] AFFIDAVIT OF D. J. GOODIN, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928

(Exhibits transmitted in original as per order of Court.)

L. O. JOHNSON, SR., AND SEA FOOD COMPANY

vs.

LOUIS A. MARKS ET AL.

In Equity

STATE OF MISSISSIPPI,
Hinds County:

Personally came before the undersigned officer in and for the aforesaid state and county, the within named D. J. Goodin, who by me being duly sworn, makes oath that he is a Special Agent and Detective; that he was employed on or about the 10th day of January, 1928, by counsel for complainants in the above-entitled cause, to go to New Orleans in the State of Louisiana and observe and investigate the conduct of the busines of the shipment of raw oysters in shells from the state of Louisiana into other states; that

he reached New Orleans upon January 12th, 1928; that he went to the station of the Illinois Central Railroad Company, from which station there go out from the state of Louisiana unto other states, four separate railroads, to wit, the Yazoo and Mississippi Valley Railroad; the Illinois Central Railroad; the Texas Pacific Railroad and the Southern Pacific Railroad; that he visited said station and saw and observed thay oysters in shells were being shipped from the said station in barrels by express to various and sundry places in the states of Mississippi and Texas, and that said oysters were also being shipped in shells beyond the jurisdiction of the state of Louisiana in sacks.

Affiant states that he observed raw oysters in barrels being shipped to the New Orleans Oyster House at Vicksburg, Mississippi, and various and sundry other shipments to points in Mississippi and the state of Texas.

Affiant states that there are a number of large fish and oyster houses in the city of New Orleans engaged in the shipping of fish, shrimp and oysters from the city of New Orleans in the state of Louisiana. That they appear to be doing a very large business, and are shipping from the state of Louisiana into other states, including Mississippi, raw oysters in barrels and sacks; that there is no restriction whatsoever of any kind upon these shipments; that the [fol. 87] dealers will ship from the city of New Orleans to the state of Mississippi, or any other state in the Union, raw oysters in barrels and/or sacks, by freight or express, in unlimited quantities, and that said dealers have continuously since the first day of January, 1928, been engaged in shipping raw oysters in the shell out of the state of Louisiana into other states. That raw oysters in shells are served on the hanf-shell in restaurants in the larger towns in the state of Mississippi, and the supply comes, almost exclusively, from the city of New Orleans.

That affiant bought in the city of New Orleans from the New Orleans Fish and Pyster Depot for shipment in interstate commerce to E. M. Hathorn, Hattiesburg, Mississippi, one sack of raw oysters in shells, which were shipped from the city of New Orleans; that affiant attaches hereto a paid invoice from the said New Orleans Fish and Oyster Depot for said sack of raw oysters in shells, which invoice is hereto attached and marked exhibit "A" hereto, the same

being asked to be considered as if set out in full herein in words and figures. That affiant attaches hereto as exhibit "B" the express receipt from New Orleans, La. to the City of Hattiesburg in the state of Mississippi, covering said shipment of raw oysters in shells; that affiant attaches hereto as exhibit "C" the receipt for said oysters aforesaid from the consignee at Hattiesburg, Mississippi. The said exhibits are asked to be made part of this affidavit and are referred to as if set out herein in full in words and figures.

Affiant purchased from F. M. Fucich & Son, New Orleans, La., one sack of raw oysters in shells, and directed the same to be shipped to himself at Vicksburg in the state of Mississippi. A copy of said invoice is hereto attached and marked exhibit "one" hereto, same being asked to be considered as if set out herein in full in words and figures. That affiant attaches hereto as exhibit "two" the express receipt therefor, the said invoice and express receipt each being dated Jan. 17, 1928; that the said express receipt is made exhibit "two" and is asked to be considered and made part of this affidavit as if set out in full in words and figures.

[fol. 88] That affiant, on the 14th day of January, 1928, purchased from Paul Zibilich Company one sack of raw oysters in the shell to be shipped to J. M. Williams at Jackson, Mississippi; that the said Paul Zibilich Company, a Louisiana corporation, shipped to the said J. M. Williams at Jackson, Miss., at the request of affiant, upon the 14th of January, 1928, one sack of raw oysters in shells; that the invoice therefor is hereto attached and marked exhibit "three," the same being asked to be considered as if set out in full in words and figures.

Affiant states that he made these purchases and shipments for the purpose of ascertaining as to whether or not there were any kind of restrictions against the shipment of raw oysters in shells from the state of Louisiana to any other points in the United States. Affiant states that the sales were made to him as aforesaid for shipment into the state of Mississippi, and that shipments were made into the state of Mississippi by the seller thereof, without any question or hesitancy, and that said shipments were accepted by the express company without any kind of question. Affiant states from what he saw and observed and learned

on inquiry from the dealers and the trade in general, that absolutely no restriction has existed since the first of January, 1928, in respect to the transportation and shipment of raw oysters in shells from the state of Louisiana to the state of Mississippi or any other state of the Union. Affiant states that he could have bought from any dealer in fish and oysters in the city of New Orleans for shipment by freight or express to Mississippi or any other state in the Union, raw oysters in shells in unlimited quantities, and could have procured the same to be shipped and transported either by the express company or by any railroad company operating from the city of New Orleans. That no instructions have been given to the express company or carriers not to accept or receive such freight for shipment, and that there is no machinery organized, in force or in operation in the city of New Orleans, nor has there been any since the first of January, 1928, regulating, controlling or preventing the shipment of raw oysters in shells from the city of New Orleans to other states in the Union. [fol. 89] Affiant spent ten days in the city of New Orleans, visiting the places of business of the various fish and oyster merchants; that he was permitted in some instances to inspect their invoices; that he talked to the managers of said companies and was told by them that they would sell and ship without restriction in interstate commerce raw oysters in the shell to any person who wanted to buy and was able to pay for the same for shipment to any point in the Union. That the New Orleans Fish and Oyster Depot showed him their invoice of shipment to the Edwards House, Jackson, Mississippi, under date of January 11, 1928, one barrel of raw oysters in shells, and also a barrel of approximately the same date of raw oysters in shells to the Belmont Cafe, in Jackson, Mississippi. Affiant states that he is familiar with conditions existing in Jackson, Mississippi; that various and sundry restaurants and hotels serve to their customers oysters on the half shell; that these oysters on the half shell are being shipped to Jackson, Mississippi, from the city of New Orleans, in the state of Louisiana, and that he knows that a dealer in Jackson, Mississippi, can buy from the city of New Orleans in the state of Louisiana, in unlimited quantities raw oysters in the shell. That one, especially, in Jackson, Mississippi, the Grillis Grill, exhibits in its show window approximately a barrel of raw

oysters, together with a sign, which proclaims that the restaurant offers to the public Louisiana oysters on the half shell; that the only limit to the purchase of said oysters for shipment and transportation from the state of Louisiana to other states in the Union is the demand of the public therefor.

Affiant states that he made a thorough study of conditions in the city of New Orleans during the period he remained there; that he found no officer of the state of Louisiana making any inspection to see if the law was being violated, or making any effort to enforce the provisions of the oyster law. Affiant states from what he saw and heard that no effort is being made or will be made to enforce the oyster law as against shipments of raw oysters in the shells from the city of New Orleans in the state of Louisiana to other states in the Union. That, upon the other hand the business [fol. 90] has grown and improved, is largely sought after and aggressively pushed.

Affiant states that upon the 20th day of January, 1928, at 12:30 p. m. he left the city of New Orleans, for the city of Jackson, Mississippi, on what is known as the Panama Limited; that he went into the dining car about the time the Mississippi line was reached; that he rode from the state of Louisiana to the state of Mississippi in the dining car; that he ordered raw oysters on the half shell, which had been brought from the city of New Orleans on the dining car, and the same were served to him, for which he paid a charge of fifty cents for one-half dozen; that a large number of persons travel on the said train, which goes from the city of New Orleans to the city of Chicago, and that there were a large number of persons in said dining car, and a number of persons were served raw oysters on the half shell, and any person who desired to purchase the same and was able to pay for them could obtain them, the only limit thereto being the requirement of the trade. That all of said raw oysters in shells were brought out from the city of New Orleans in the state of Louisiana, on the dining car of the Panama Limited and the Illinois Central fast passenger train, and that all of said oysters were purchased in the city of New Orleans and were what is known as Louisiana Bayou Cook oysters.

[fol. 91] Affiant further states that upon the 22nd day of January, 1928, he left Jackson, Mississippi, on the northbound fast Illinois Central Railroad train number four about one-twenty p. m. This is a train which the Illinois Central Railroad operates from New Orleans in the state of Louisiana, to Chicago, in the state of Illinois and Saint Louis in the state of Missouri. That affiant went into the dining car situated upon said train, which had been brought on said train from New Orleans in the state of Louisiana, and asked as to whether or not he could be served with Louisiana oysters. He was informed by the manager in charge of said dining car that Louisiana oysters on half shell were regularly served on that train; that he was handed a menu card, the original of which is hereto attached and marked exhibit "one A," from an inspection of which it will appear that oysters on the half shell are listed among the food served on said train; that affiant took his luncheon on said train and bought, with other food, half a dozen oysters on the half shell. That said menu card is asked to be considered as if set out in full in words and figures. That he was informed that said oysters were brought out of the city of New Orleans on said train for serving any person or passenger on said train who desired the same. Affiant states that he is familiar with Louisiana oysters; that they have a quality peculiar to themselves, and that the oysters served to him on the half shell were Louisiana oysters; that they were the same kind and quality of oysters which he ate in New Orleans, and he recognized them as such. Affiant states that the only limit to the amount of oysters which could be purchased was the capacity and desire of the passengers being served on the dining car of said commodity not only served to affiant but other passengers on said dining car; that they are brought out of Louisiana for this purpose alone.

Affiant states that he got off at Memphis, Tennessee, on the night of January 22nd, aforesaid; that on Monday morning, January 23rd, he went to the office of the American Railway Express Company in Memphis, Tennessee, and [fol. 92] inquired if they were handling oysters in shells from New Orleans into Memphis. The agent and servant of the American Railway Express Company in charge of the office, informed him that the American Railway Express

Co. habitually transported oysters in the shell in barrels from the city of New Orleans to the city of Memphis in the state of Tennessee. Affiant asked if he might be permitted to examine the books of the American Railway Express Company in order to ascertain the number of shipments and the consignees thereof. Affiant was informed that without process of court he would not be permitted to see or examine these books or obtain any information therefrom but that under proper court order the books and records were available for any legitimate purpose.

Affiant states that he made inquiry on the streets in Memphis as to where he could purchase oysters on the half shell, and he was directed, among other places, to the Madison Sea Food, a restaurant situated on Madison Street in Memphis in the state of Tennessee. Affiant went there and he asked the Manager as to whether or not he could obtain Louisiana oysters on the half shell, and he was informed that this restaurant made a specialty of Louisiana sea food, and among the sea foods, oysters on the half shell. Affiant states that on Madison Street, in front of said restaurant, there is large show window for advertising purposes, which contained various kinds of fish, which are served as food in the restaurant, and a large quantity of oysters in the shell with hunks of ice among it; that said show case has as its foundation one made of Louisiana oyster shells. Affiant states that this particular restaurant features the Louisiana oysters on the half shell and uses this method of advertising in order to induce the public to come and purchase sea foods of all kinds, including Louisiana oysters on the half shell. Affiant caused to be taken (which he knows to be accurate) from the front a picture of said show window showing the show case, oysters in the shell on the inside, and the foundation on which said show case rests built of oysters shells, all of which affiant is informed was of Louisiana oysters. Affiant makes said [fol. 93] picture exhibit "one B" to this affidavit and asks that the same be considered as if set down in full in words and figures. Affiant asked the manager in charge of said restaurant where he obtained oysters from, including oysters in the shell. He stated that they came from New Orleans, Louisiana, from the firm of Paul Zibilich & Co. in the city of New Orleans. He said that New Orleans was

the most direct route for Memphis to obtain sea food and oysters; that they had to be brought as promptly as possible, and that New Orleans was the source of supply for Memphis. The manager stated that he was making a specialty feature of Louisiana oysters on the half shell and using this as an advertising medium. The restaurant was crowded with people and the management sold large quantities of Louisiana oysters on the half shell. Affiant attaches hereto as exhibit "one C" a photograph taken in his presence, (which he knows to be correct) of the interior of said restaurant showing two waitresses in the act of serving oysters on the half shell, the manager standing behind the counter. Affiant asked the manager how many barrels of Louisiana oysters in the shell he purchased for his restaurant per week, and he stated from 7 to 10 barrels per week, all of which were purchased from New Orleans in the state of Louisiana, from the above-named firm, and stated that he could buy them at any time, day or night, without limit.

Affiant asked the proprietor of the restaurant for an affidavit of these facts, but he promptly declined to make the affidavit. Affiant had no way of requiring or compelling him to do so, but the facts may be proved from said witness upon interrogatories addressed under court order or by taking testimony in the manner directed in a court.

Affiant did not take the picture of any other restaurant or obtain oysters on the half shell from any other restaurant in Memphis, but he is advised that in other restaurants and in prominent hotels Louisiana oysters are purchased and transported to Memphis, Tennessee in interstate commerce, and are offered to guests and customers on the half shell.

[fol. 94] Affiant states that in the Madison Street restaurant to which he has just referred and which is represented in the photographs aforesaid, he was shown one of the barrels in which raw oysters in the shell are transported from New Orleans to Memphis, Tennessee; that the barrel is either a sugar or flour barrel, or about the size thereof, with a specially prepared top, which fits down inside the barrel, and that that particular barrel had on it and tightly fastened to the top of the barrel so that the same could not be removed, and at the side thereof also, the name of

the consignor, "Paul Zibilich & Co., New Orleans, Louisiana."

(Signed) D. J. Goodin.

Sworn to and subscribed before me this the 24th day of January, 1928. (Signed) Louise Melton, Notary Public. (Seal.)

[fol. 95] AFFIDAVIT OF W. H. LUCAS—FOR PLAINTIFF—Filed January 26, 1928

(Exhibits Attached to this Affidavit Transmitted in the Original by Order of Court)

STATE OF MISSISSIPPI,
County of Jones:

Personally appeared to me the under-signed authority in and for the State and County aforesaid, W. H. Lucas, who by me first duly sworn, states on path that he is a resident of the City of Laurel, Jones County, Mississippi, and that he is the proprietor of the Lucas Cafe, in said City; that he has been in the Cafe business in the City of Laurel for more than fifteen years.

Affiant states that while there is not much demand in the City of Laurel for fresh raw Oysters on the half shell, that, never-less, he occasionally uses same and has served same to customers in his restaurant. He states further that these Oysters are obtained from Zibilich's in the City of New Orleans, State of Louisiana; that they can be obtained either by freight or express in barrels or sacks in any quantity he desires. Affiant further states that he has received Oysters in the raw state on the half shell from the aforesaid firm since the first of January 1928, and has had no trouble in obtaining same. As a matter of fact, affiant states that Oysters are received by him from New Orleans twenty-four hours after ordering them.

Attached thereto and made a part of this affidavit is a price list sent to *be* by Zibilick's from New Orleans, and I, also, attach hereto the shipping tag that was received with my last order of raw Oysters, or Oysters in the shell,

from New Orleans. I, also, make this tag a part of my affidavit.

Witness, this the 24th day of January, 1928.

(Signed) W. H. Lucas.

Sworn to and subscribed before me, this the 24th. day of January, 1928. (Signed) Alma Grayson, Notary Public. (Seal.)

[fol. 96] AFFIDAVIT OF B. O. GUNN, ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, B. O. Gunn, who being by me first duly sworn did depose and say:

That he is an adult citizen of Biloxi, Mississippi, has resided in said city for over twenty years, during a large part of which said time he has been in the employ of the Sea Food Company and at the present time is acting manager of said Sea Food Company;

That at the present time affiant knows that as much as seventy-five per cent of the capital stock of the Sea Food Company, a Louisiana corporation, is owned by citizens of Louisiana, to-wit: H. E. Gumbel of New Orleans;

That the Sea Food Company upon making the contract set out in the bill of complaint with L. O. Johnson, Jr., sought permission from the state of Louisiana to carry out said contract by moving oysters from Louisiana to Mississippi, but that this permission was absolutely refused and the Sea Food Company was notified that the terms of the laws of Louisiana preventing the export of oysters from said state would be enforced against the Sea Food Company;

Affiant further says that the Sea Food Company can carry out said contract not only by means of boats employed by it but that oysters can be bought by it in Louisiana from citizens of Louisiana engaging in the catching of oysters, but that on account of said law these oysters

cannot be lawfully moved from the State of Louisiana to the State of Mississippi, so that the Sea Food Company can can same in the State of Mississippi;

Affiant further says that it would work an irreparable harm and injury to the Sea Food Company to have to move its canning plant to the State of Louisiana for the purpose [fol. 97] of canning these oysters, first, because it would take months to move said plant, and secondly, because at this time affiant knows of no location in Louisiana where said plant could be profitably and economically operated;

That in order to profitably and economically operate a plant for the canning of oysters in Louisiana it would be necessary first, that said plant be situated where there is a supply of pure, fresh water; second, that said plant must be situated at a point where there is an entrance from the banks of the Mississippi River to the marshes where oysters are found and this can only be done by the use of private ways or canals; third, that said plant must be situated at some point where there is a large community capable of furnishing from one hundred to two hundred or more laborers to open these oysters and capable of furnishing the skilled fishermen required to catch same; fourth, that at this time affiant knows of no such point within trading distance of the Louisiana marshes in the state of Louisiana where affiant's corporation can obtain the necessary requisites for the successful operation of a canning plant;

Affiant further says that unless the enforcement of said law is prevented that the boats owned by affiant, as well as boats hired by it will be seized and forfeited and that the servants and agents of affiant employed in carrying out the contract mentioned in the bill of complaint will be arrested and imprisoned and that certain damage is eminent unless the officials of the state of Louisiana are restrained from enforcing said law and that the result of the enforcement of said law will irreparably damage affaint to the extent of many thousands of dollars.

And further affiant sayeth not.

(Signed) B. O. Gunn.

Sworn to and subscribed before me, this 24th. day day of January, A. D. 1928. (Signed) Eugene Peresich, Notary Public. (Seal.)

[fol. 98] AFFIDAVIT OF J. R. MCKINNON ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, J. R. McKinnon, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Harrison County, Mississippi, having resided in said County and State for six years; that during the past six years he has been indirectly connected with transportation, particularly with reference to the shipment of shrimp and oysters at Biloxi, Mississippi, that therefore he is familiar with this industry in Biloxi and is somewhat acquainted with it as it is carried on in New Orleans, Louisiana; that at the request of the Biloxi Chamber of Commerce he went to New Orleans, Louisiana on or about the 17th day of January, A. D., 1928, that upon his arrival at New Orleans, Louisiana, he became associated with one Mr. D. J. Goodman, who at that time was investigating the shipment of raw oysters from the State of Louisiana to other states; that in company with Mr. Goodman he made a tour of the oyster shipping business of New Orleans as well as the different railroads of the city, the results of his investigation being as follows:

That in the various plants of those persons engaged in opening and shipping raw oysters, as well as shipping raw oysters in sacks and barrels, he found a very considerable business going on in the shipping of oysters in the shell by means of sacks and barrels to various points in Texas, Mississippi and Tennessee, and upon talking to the men who were running these places of business, were informed that these shipments extended to points as far east as [fol. 99] Florida, and that they were prepared to ship said oysters in the shell to any points at any time and in any quantities; that this business was conducted openly by these persons and no effort was made to conceal from affiant that they were ready, able and willing to violate the shipping of oysters in the shell from Louisiana, but on the contrary the very persons seemed eager to secure new business and

to advertise the fact of their ability to take care of this new business;

That while casually seeing one of the plants, affiant saw in process of shipment a barrel of shell oysters consigned to P. Messina, 1618 Crawford Street, Vicksburg, Mississippi, and a barrel of oysters in the shell shipped to the Carroll Hotel at Vicksburg, Mississippi, this last shipment being made by S. M. Fucich & Sons, who informed affiant that the above persons were shipped a barrel of oysters every other day of the week;

Affiant further states that upon his investigation made in the various express depots that he saw various shipments of oysters in the shell being sent from the State of Louisiana to points outside of the State of Louisiana, but is unable to give the names of the consignees for the reason that the officials of the railroad company would not allow him to secure this information, this being against the rules of the various common carriers of trade in the United States.

Affiant further says that he was with the said Mr. Goodman when he purchased from S. M. Fucich & Sons of New Orleans, a barrel of oysters, with directions for same to be shipped to Vicksburg, Mississippi, and was with the said Goodman when he made various investigations among the raw oyster shippers of New Orleans, and while the said Goodman talked with said oyster shippers and discussed with them the extended manner of their conduct of the raw oyster shipping business, and that the statement was made [fol. 100] by the said Goodman with reference to said investigations while in the company of said affiant, is truly set out in the affidavit of said Goodman;

Affiant further says that during the four days spent in New Orleans, all of which time was actually spent either at the railroad stations or making rounds of the oyster shipping firms of New Orleans; that he saw no evidence whatsoever of the inspection of this business by the state officials of Louisiana, that although he carefully questioned the various persons engaged in said business he was unable to ascertain if any effort was being made by the officials of the State of Louisiana to prevent the shipments hereinabove mentioned, and that from a close and careful and thorough investigation of the shipping of raw oysters from New Orleans covering a period of four days, affiant says

that this business is not a large and profitable business, but that from statements given to affiant from those participating in same, that said business is increasing in size and that neither is there any interruption of same at this time by the law officials of Louisiana, nor does there seem to be in the minds of the persons engaged in said business any expectation of such interruption;

Affiant further states from his knowledge of the oyster business in Biloxi, Mississippi, secured while being engaged in the transportation business at Biloxi, that the business hereinabove related is in direct competition with the business conducted by L. O. Johnson, Jr. of Biloxi, Mississippi, that some of the persons to whom shipments of oysters were being made in New Orleans as hereinabove related is now or have been customers of said L. O. Johnson, Jr., and that the abilty of the Louisiana dealers to ship raw oysters in the shell along with open raw oysters to these persons gives the said Louisiana dealers a vast and important advantage over the said L. O. Johnson, Jr.;

[fol. 101] Affiant further says that in addition to the above that he knows as a matter of fact that the French Restaurant of Biloxi, Mississippi, is compelled to secure its Louisiana oysters from dealers in New Orleans, who ship this oyster in the whole shell by express to the said French Restaurant in Biloxi from New Orleans, Louisiana.

And further affiant sayeth not.

(Signed) J. R. McKinnon.

Sworn to and subscribed before me, this the 25th day of January, A. D. 1928. (Signed) Antonia Peresich, Notary Public. (Seal.)

[fol. 102] AFFIDAVIT OF HENRY WEIDMANN ON BEHALF OF PLAINTIFF—Filed January 26, 1928

(Exhibits Attached to this Affidavit Transmitted in Original by Order of Court)

STATE OF MISSISSIPPI,
County of Lauderdale:

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, Henry Weidmann,

who, by me being first duly sworn, on his oath makes affidavit and says: That he is the manager of Weidmann's Cafe, a restaurant in the City of Meridian, Lauderdale County, Mississippi; that fresh, raw oysters on the half-shell are habitually used and served to customers in said restaurant; that these oysters are usually obtained by said restaurant in the shell, in barrels, by express, from Paul Zibilich Co., Inc., oyster dealers, doing business in the City of New Orleans, Louisiana, and are shipped to said restaurant direct from the City of New Orleans, Louisiana; that these raw oysters in the shell have been obtained from such source since the first day of January, 1928, up to date, without interruption; that these raw oysters in the shell, to be served on the half-shell, can be obtained from such source in any quantity and at any time desired, that is, in a single barrel or a car load of barrels, as the exigencies of business require; that a seven dollar ($7.00) shipment of these raw oysters in the shell, in a barrel, was received by Weidmann's Cafe, by express, cash-on-delivery, through the Southeastern Express Company, on the twenty-second day of January, 1928; that the bill for said shipment of raw oysters in the shell, which was attached, within an envelope, to the barrel in which the shipment was made, is hereto attached, within said envelope, and the two are made Exhibit "A" to this affidavit; that the receipt of the Southeastern Express Company, showing payment for said shipment, is hereto attached and made Exhibit "B" to this affidavit.

Affiant further makes affidavit and says, that there is a printed sign on the front plate-glass window of Weid-
[fol. 103] mann's Cafe to the effect that oysters on the half-shell are served within; and he attaches hereto and makes Exhibit "C" to this affidavit, an accurate photograph of the front of Weidmann's Cafe, showing said sign and the counter from which said oysters are served.

(Signed) Henry Weidmann.

Sworn to and subscribed before me, this 24th day of January, 1928. (Signed) Chas. A. McIntosh, Notary Public. (Seal.) My commission expires Aug. 13, 1930.

[fol. 104] AFFIDAVIT OF C. B. FOSTER ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, C. B. Foster, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Mississippi, and has been engaged in the oyster business for many years past and that for this reason is thoroughly familiar with the oyster business as conducted in Louisiana *-dn* Mississippi;

That affiant knows that not only are the oyster beds of Louisiana more than sufficient to care for all possible demands on same, but that in the years past many of these beds have become ruined because of the impossibility of same being properly fished, that is, where oysters are not tonged or dredged to an extent that will take up the new growth these oysters become so thick that they merge into a mass and become what is known as coon oysters, that is their growth and size is destroyed and the oysters become of no commercial value;

That if this condition is allowed to exist for many years the oysters from a dirth of food or from other natural causes die and reefs that would yield untold quantities of oysters for this reason in the past have become extinct and for this reason there is now found in various parts of the [fol. 105] State of Louisiana millions of barrels of dead oysters which make up numerous oyster shell reefs in the State of Louisiana; that at the present time these reefs are being utilized by the state through its Conservation Department for sale to various individuals who take the shells from the reefs and either grind the shells into oyster grit, all of which is shipped from the State of Louisiana or else utilize the shells for the building of roads and for ballasts on railroads;

Affiant further says that any person or non-resident of the State of Louisiana can buy these shells in unlimited quantities, that at this time the shells can be bought and are being bought and shipped out of the state for road

building purposes and the price the State of Louisiana obtains for these shells is two cents per cubic yard;

That unless the oyster reefs of the State of Louisiana are cultivated as they have been cultivated by the taking of oysters therefrom, these reefs will speedily increase and the State of Louisiana will be able to realize from the dead shells only two cents per cubic yard, whereas, the tax alone from the live oysters will yield twenty-one cents per cubic yard;

Affiant further says that at Biloxi, Mississippi, during the past sixty years there has been builded up a great industry in the packing and shipping of oysters and that for this period of time the City of Biloxi has obtained oysters from Louisiana to such an extent that various citizens of Louisiana have come to Biloxi and builded their factories at Biloxi;

That the same industry has attracted hundreds of natives of Louisiana who at this time are temporarily residents of Biloxi engaged in various work around the oyster factories and that this development has extended to such a point that at the present time hundreds of thousands of dollars are invested in this industry and thousands of people are employed in it;

[fol. 106] That the effect of the enforcement of the oyster law as set out in the bill of complaint in this cause would be to compel a removal of these people to less habitable portions of Louisiana and to compel the removal of the various factories in Biloxi, at an expense of thousands of dollars to the owners of these factories and at the expense of untold suffering on those persons who would have to leave their pleasant homes and surroundings in Biloxi and move to the marshy parts of Louisiana where the inhabitants are constantly being tormented by mosquitoes and other insects, and where their health is endangered by improper water supply, etc.;

Affiant further states that only a few of the oysters that can be caught in the marshes of Louisiana referred to in the bill of complaint have ever been packed on the western banks of the Mississippi River, and that on the eastern banks of the Mississippi River, are situated three oyster factories, only two of which are being operated at this time; that these two factories cannot consume more than

one thousand barrels of oysters per day, whereas the possible yield of oysters in the Louisiana marshes east of the Mississippi River is between five and ten thousand barrels per day, without the possibility of any damage to the oyster reefs of Louisiana; that unless this surplus of oysters is caught that the same will speedily grow into masses as hereinabove described and will become valueless, except as dead oyster shells;

That on account of the necessity of obtaining a private entrance to the Louisiana marsh from the banks of the Mississippi River it is almost impossible for the packers to obtain proper sites to pack oysters in Louisiana, and at this time it would be wholly impossible for factories in Biloxi, Mississippi, to obtain the necessary sites or to obtain the necessary labor with which to engage in this business and oysters could only be packed at a great loss unless the price of oysters to persons in various parts of the United States were raised to a great extent;

[fol. 107] Affiant further says that oysters in Louisiana have for years past been recognized as a commodity salable on the open market, that the sole purpose of catching these oysters from the time the fisherman went into the marsh after the oysters was either to sell them and ship them out of the state, or to sell them to factories located in the state for canning, thereafter to be shipped out of the state, and that said oysters have always been regarded as an object of commerce in Louisiana, very few being required by the local citizens of said state, in fact, more than nine-tenths of all the oysters used by citizens of said state having been grown on private beds and all of the marsh oysters having been sold and exported from the state;

Affiant therefore says that the sole purpose of the so called "Louisiana Oyster Law" is to compel the entrance of the Biloxi packers into Louisiana to pack these oysters and not to conserve the oyster supply in Louisiana; that this purpose was expressed by the persons seeking the passage of the law at Baton Rouge, Louisiana and that when the raw oyster dealers of Louisiana came to Baton Rouge in opposition to this law, affiant is informed and believes that they were told that the law would not be enforced except as to oysters going into Mississippi, and affiant is further informed and believes that this promise

has been kept and that at this time in increasing quantities these oysters in the shell are being shipped by the raw dealers of Louisiana to various parts of the United States;

Affiant further states that the oyster shells accumulating from the oysters caught in the Louisiana marshes mentioned in the bill of complaint have been of very small value to citizens of Louisiana, most of said shells having been dumped at the factory; the majority of which said shells after having been dumped have been laying waste at said factories for the past ten or fifteen years, there being practically no market for these shells, due to the fact that the [fol. 108] shells dredged from the marshes of Louisiana are so numerous in extent and so much more easily handled that the persons purchasing these dead shells can sell same at a price way beneath the price that one having shells, the by-products of oysters, can sell same;

Affiant further says that they are informed and believe that thousands of barrels of these oysters have been dumped into bayous of the marshes where they will never be of use or value to any person in the state of Louisiana;

Affiant further says that in affiant's opinion as an experienced oyster man, that there is no possibility of the state of Louisiana suffering any harm whatsoever if an injunction is issued in this case for the reasons stated hereinabove, but that the damage that will accrue to the Sea Food Company and L. O. Johnson, Jr. directly and indirectly to thousands of poor people of Biloxi, Mississippi, will not only be irreparable unless an injunction issue herein, but that it is impossible for affiant to state the amount of suffering and injury that will be caused thousands of poor people residents of Biloxi, a majority of which said persons are at this time legal citizens of the state of Louisiana temporarily residing in Biloxi for the purpose of securing employment; that numbers of these citizens of Louisiana are employed on the boats of the Sea Food Company and other boats utilized by the Sea Food Company in the catching of oysters in Louisiana, and under the laws of the State of Louisiana have a right to fish oysters in that state;

Affiant further states upon information and belief that this law is being openly defied by citizens of Louisiana who export oysters in the raw shell, that this business is con-

stantly increasing in the state and that these oysters are being shipped out of the state to various parts of the United States, and affiant is informed and believes that the Conservation Department has no inspector or no method of inspection whereby this export is being prevented, but that same is done with the knowledge and approval of said Commission.

[fol. 109] And further affiant sayeth not.

(Signed) C. B. Foster.

Sworn to and subscribed before me, this the 25 day of January, A. D. 1928. (Signed) A. S. Mevjlo, Notary Public. (Seal.)

[fol. 110] AFFIDAVIT OF B. TALTAVUL, ON BEHALF OF PLAINTIFF—Filed Jan. 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, B. Taltavul, who being by me first duly sworn did depose and say:

That he is an adult resident of Biloxi, Mississippi, and has been engaged in the oyster business for many years past, and that for this reason is thoroughly familiar with the oyster business as conducted in Louisiana and Mississippi;

That affiant knows that not only are the oyster beds of Louisiana more than sufficient to care for all possible demands on same, but that in the years past many of these beds have become ruined because of the impossibility of same being properly fished, that is, where oysters are not tonged or dredged to an extent that will take up the new growth these oysters become *do* thick that they merge into a mass and become what is known as coon oysters, that is, their growth and size is destroyed and the oysters become of no commercial value;

That if this condition is allowed to exist for many years the oysters from a dirth of food or from other natural causes die and reefs that would yield untold quantities of

oysters for this reason in the past have become extinct and for this reason there is now found in various parts of the state of Louisiana millions of barrels of dead oysters which make up numerous oyster shell reefs in the state of Louisiana; that at the present time these reefs are being utilized by the state through its Conservation Department for sale to various individuals who take the shells from the reefs and either grind the shells into oyster grit, all of which is shipped from the state of Louisiana or else utilize the shells for the building of road and for ballasts on [fol. 111] railroads;

Affiant further says that any person or non-resident of the State of Louisiana can buy these shells in unlimited quantities, that at this time the shells can be bought and are being bought and shipped out of the state for road building purposes and the price the state of Louisiana obtains for these shells is two cents per cubic yard;

That unless the oyster reefs of the state of Louisiana are cultivated as they have been cultivated by the taking of oysters therefrom, these reefs will speedily increase and the state of Louisiana will be able to realize from the dead shells only two cents per cubic yard, whereas, the tax alone from the live oysters will yield twenty-one cents per cubic yard:

Affiant further says that at Biloxi, Mississippi, during the past sixty years there has been builded up a great industry in the packing and shipping of oysters and that for this period of time the City of Biloxi has obtained oysters from Louisiana to such an extent that various citizens of Louisiana have come to Biloxi and builded their factories at Biloxi;

That the same industry has attracted hundreds of natives of Louisiana who at this time are temporarily residents of Biloxi engaged in various work around the oyster factories and that this development has extended to such a point that at the present time hundreds of thousands of dollars are invested in this industry and thousands of people are employed in it;

That the effect of the enforcement of the oyster law as set out in the bill of complaint in this cause would be to compel a removal of these people to less habitable portions

of Louisiana and to compel the removal of the various factories in Biloxi, at an expense of thousands of dollars to the owners of these factories and at the expense of untold suffering on these persons who would have to leave their pleasant homes and surroundings in Biloxi and move to the marshy parts of Louisiana where the inhabitants are constantly being tormented by mosquitoes and other insects, and where their health is endangered by improper water wupply, etc.

Affiant further states that only a few of the oysters that can be caught in the marshes of Louisiana referred to in [fol. 112] the bill of complaint have every been packed on the western banks of the Mississippi River, and that on the eastern bank of the Mississippi River are situated three oyster factories, only two of which are being operated at this time, that these two factories cannot consume more than one thousand barrels of oysters per day, whereas the possible yield of oysters in the Louisiana marshes east of the Mississippi River is between five and ten thousand barrels per day, without the possibility of any damage to the oyster reefs of Louisiana; that unless this surplus of oysters is caught that the same will speedily grow into masses as hereinabove described and will become valueless, except as dead oyster shells.

That on account of the necessity of obtaining a private entrance to Louisiana march from the banks of the Mississippi River it is almost impossible for the packers to obtain proper sites to pack oysters in Louisiana, and at this time it would be wholly impossible for factories in Biloxi, Mississippi, to obtain the necessary sites or to obtain the necessary labor with which to engage in this business and oysters could only be packed at a great loss unless the price of oysters to persons in various parts of the United States were raised to a great extent;

Affiant further says that oysters in Louisiana have for years past been recognized as a commodity salable on the open market, that the sole purpose of catching these oysters from the time the fishermen went into the marsh after the oysters was either to sell them and ship them out of the state, or to sell them to factories located in the state for canning, thereafter to be shipped out of the state, and that said oysters have always been regarded as an object of

commerce in Louisiana, very few being required by the local citizens of said state, in fact, more than nine-tenths of all the oysters used by citizens of said state having been grown on provate beds and all of the marsh oysters having been sold and exported from the state;

Affiant therefore says that the sole purpose of these — called "Louisiana Oyster Law" is to compel the entrance of the Biloxi packers into Louisiana to pack these oysters and not to conserve the oyster supply in Louisiana; that this purpose was expressed by the persons seeking the passage of the law at Baton Rouge, Louisiana, and that when the raw oyster dealers of Louisiana came to Baton Rouge in opposition to this law, affiant is informed and be- [fol. 113] lieves that they were told that the law would not be enforced except as to oysters going into Mississippi, and affiant if further informed and believes that this promise has been kept and that at this time in increasing quantities these oysters in the shell are being shipped by the raw dealers of Louisiana to various parts of the United States.

Affiant further states that the oyster shells accumulating from the oysters caught in the Louisiana marshes mentioned in the bill of complaint have been of very small value to citizens of Louisiana, most of said shells having been dumped at the factory, the majority of which said shells after having been dumped have been laying waste at said factories for the past ten or fifteen years, there being practically no market for these shells, due to the fact that the shells dredged from the marshes of Louisiana are so numerous in extent and so much more easily handled that the persons purchasing these dead shells can sell same at a price way beneath the price that one having shells, the by-products of oysters, can sell same;

Affiant further says that they are informed and believe that thousands of barrels of these oysters have been dumped into bayous of the marshes where they will never be of use or value to any person in the state of Louisiana;

Affiant further says that in affiant's opinion as an experienced oyster man, that there is no possibility of the state of Louisiana suffering any harm whatsoever if an injunction is issued in this case for the reasons stated hereinabove, but that the damage that will accrue to the Sea Food Company and L. O. Johnson, Jr. directly and

indirectly to thousands of poor people of Biloxi, Mississippi, will not only be irreparable unless an injunction issue herein, but that it is impossible for affiant to state the amount of suffering and injury that will be caused thousands of poor people residents of Biloxi, a majority of which said persons are at this time legal citizens of the state of Louisiana temporarily residing in Biloxi for the purpose of securing employment, that numbers of these citizens of Louisiana are employed on the boats of the Sea Food Company and other boats utilized by the Sea Food Company in the catching of oysters in Louisiana, and under the laws of the state of Louisiana have a right to fish oysters in that state;

[fol. 114] Affiant further states upon i-formation and belief that this law is being openly defied by citizens of Louisiana who export oysters in the raw shell, that this business is constantly increasing in the state and that these oysters are being shipped out of the state to various parts of the United States, and affiant is informed and believes that the Conservation Department has no inspector or no method of inspection whereby this export is being prevented, but that same is done with the knowledge and approval of said Commission,

And further affiant sayeth not.

(Signed) B. Taltavull.

Sworn to and subscribed before me, this 24th. day of January, A. D., 1928. (Signed) A. S. Gorenflo, Notary Public. (Seal.)

[fol. 115] AFFIDAVIT OF LOUIS BRAUN ON BEHALF OF PLAINTIFF—Filed January 26, 1928

[Title omitted]

Personally appeared before me, the undersigned authority a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Louis Braun, who being by me first duly sworn did depose and say;

That not only does the state of Louisiana through its Conservation Department patrol the waters of the Missis-

sippi Sound for the purpose of intercepting boats carrying oysters from Louisiana to Mississippi, but in addition thereto said Conservation Department has stationed at Biloxi, Mississippi, a deputy inspector of conservation who watches and detects the entrance into the harbor of Biloxi of any and all oysters that come from Louisiana to Biloxi, thereby taking every effective precaution for the purpose of preventing any violation of the law by citizens of the State of Mississippi.

And further deponent sayeth not.

(Signed) Louis Braun.

Sworn to and subscribed before me, this the 24th day of January, A. D. 1928. (Signed) A. S. Mevjlo, Notary Public. (Seal.)

[fol. 116] AFFIDAVIT OF GEORGE BIRRELL ON BEHALF OF DEFENDANT—Filed January 26, 1928

[Title omitted]

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came George Birrell, who on being duly sworn, deposed and said:

That he is a resident of New Orleans; that he is President of the Caernarvon Canning Co. Inc. of Louisiana, domiciled in New Orleans, with factory location at Caernarvon, in the Parish of Plaquemines; and that he is actively engaged in the business of fishing and canning oysters; and he is personally familiar with the oyster supply from the natural reefs and oyster bedding grounds in this State, particularly those lying East of the Missisippi River.

That as a result of the creation of the Bohemia Spillway in about the latter part of the year 1925, and also the creation of the Caernarvon artificial crevasse in April 1927, the largest part of the oyster reefs and beds south of Dead Men's Island were destroyed; and consequently the oyster supply in that vast territory called the South Louisiana marshes which furnished the Louisiana fishermen and factories with oysters has been eliminated.

That as a further result of said spillways the oyster supply remaining will barely furnish the present Louisiana fisherman and factories for about three months; and if the Mississippi fishermen are allowed to encroach upon this territory and take the Louisiana oysters out of the State in the shell, the beds will be permanently depleted, and the present oyster supply will not last thirty days That this statement is made from past experience with the Mississippi oyster fishermen following upon the 1922 crevasse at Poydras, which also destroyed large oyster reefs.

[fol. 117] That there exists no good reason in law or in equity therefore why the Mississippi fishermen and canning factories should be granted any extended delays by the further orders of this Honorable Court to defeat the purpose of the Louisiana law to preserve this valuable natural resource.

(Signed) Geo. Birrell.

Sworn to and subscribed before me this 26th day of January, 1928. (Signed) H. W. Niehues, Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

[fol. 118] AFFIDAVIT OF DR. V. K. IRION, ON BEHALF OF DEFENDANTS—Filed January 26, 1928

[Title omitted]

Before me, the undersigned authority, on this 25th day of January, 1928, personally came and appeared Dr. V. K. Irion, to me personally known, who being by me first duly sworn did depose as follows:

I am Conservation Commissioner for the State of Louisiana. Mr. James N. McConnell, is the director of the Oyster Division of the Department of Conservation under my appointment.

I know, as a matter of fact, that large use is being made in the State of Louisiana of the oyster shells gathered from the waters of said state. There are in the parish of St. Mary, at Berwick and at Morgan City, Louisiana, two large shell crushing factories, one at each place, making chicken feed out of oyster shells. There is another factory

that has been erected on the Hays Canal in Plaquemines Parish, which is not yet in operation, but it is expected will shortly be put in operation.

Large use of oyster shells for road building and ballast purposes is being made also of the oyster shells from Louisiana waters.

I am advised that there have been filed in connection with the Bill of Complaint in this matter affidavits to the effect that to my knowledge oysters in the shell are permitted to be exported from the State of Louisiana. This assertion of fact is not true. I do not deny that there may be some bootlegging in raw oysters as bootlegging is done in other articles. I have endeavored and am continuing to endeavor, through all my officers, to impartially enforce the oyster [fol. 119] law of the State of Louisiana, and none of my officers nor do I knowingly permit any violations of the conservation laws of Louisiana.

The oyster law of Louisiana was enacted to conserve and protect the oyster industry. I do not believe, nor do I consider that the supply of oysters in Louisiana is inexhaustible, on the contrary, it is necessary that conservation measures should be applied to this fisheries industry in order that Louisiana may escape the fate of Maryland, and as I am advised, the State of Mississippi in the depletion of her own natural reefs until she took steps to conserve them.

(Signed) V. K. Irion.

Sworn to and subscribed to before me this 25th day of January, 1928. (Signed) Michael M. Irwin, Notary Public. (Seal.)

[fol. 120] AFFIDAVIT OF JAMES N. MCCONNELL ON BEHALF OF THE DEFENDANTS—Filed January 26, 1928

[Title omitted]

Before me, the undersigned authority, on this 25th day of January, 1928, personally came and appeared James N. McConnell, to me personally known, who being by me first duly sworn, did depose as follows:

I am the director of the Oyster Division of the Department of Conservation, and it comes within my duties to enforce the provisions of Act 258 of the Legislature of the State of Louisiana for the year 1926, known as the oyster law.

The provisions of this law, which law was adopted in the legislative session of 1926, these provisions applying to the prohibition of the exportation of oysters in the shell from Louisiana, did not go into effect until January 1, 1928, this being done to give the oyster canning factories in Mississippi an opportunity to acquire sites and build their factories in Louisiana.

A similar provision in the shrimp law of Louisiana brought several of the shrimp canning factories into Louisiana where they might enjoy the natural resources from the waters of Louisiana.

There are many sites in Louisiana that would be suitable for the erection of oyster canning factories in this state. Dunbar-Dukate Company has bought a site at Slidell, Louisiana, to which he intends to move his Biloxi, Mississippi canning factory as soon as this Louisiana law governing oysters is enforced.

[fol. 121] The Conservation Department of Louisiana is prepared to enforce this Louisiana law and has been enforcing it against everyone until restrained in this case by the court order.

There is great use made in Louisiana of oyster shells and this use is increasing. They are used for chicken feed when ground, and the demand for this is larger than the present supply. There is one large factory at Berwick, La., and another at Morgan City, La., and there is a factory just completed in Plaquemines Parish on the west bank of the Mississippi River. Whereever oyster shells are available they are largely used for road building, and they can be used for fertilizer when converted into lime. One of the most important uses for oyster shells is as cultch where the shells are returned to the waters for the purpose of the young oyster spat setting thereon for propagation purposes, and vast quantities are used for this purpose. Where the Louisiana reefs are depleted of the oysters by the fishermen who remove the oysters in

the shell beyond the state, these shells never come back to Louisiana, and there is nothing done to develop the reefs or keep them producing.

Oyster shells are largely used for railroad track ballasting on account of the soft, alluvial character of the Louisiana soil.

So far as I have any knowledge, there are no oysters in the shells permitted to go outside the state, and my force is instructed to prevent that being done. If it is done, it is done surreptitiously and without the knowledge of any of our officers.

The supply of oysters in Louisiana is not inexhaustible and it is necessary that conservation measures be applied thereto in order to insure an ample supply of oysters.

(Signed) James N. McConnell.

Sworn to and subscribed to before me this 25th day of January, 1928. (Signed) Michael M. Irwin, Notary Public.

[fol. 122] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING CLERK TO TRANSMIT CERTAIN EXHIBITS IN THE ORIGINAL—Filed February 1, 1928

It is ordered, adjudged and decreed that the Clerk of this Court, in preparing the record for the Supreme Court of the United States, may, where necessary or desirable, include in the record, the original of any document, photograph or exhibit forming part of the record.

Ordered, adjudged and decreed this the 30th day of January, 1928.

(Signed) Louis H. Burns, District Judge.

[fol. 123] IN UNITED STATES DISTRICT COURT

NOTE AS TO ORIGINAL EXHIBITS TRANSMITTED

The following exhibits are transmitted in the original; under order of court, said order being copied at page 122 of this transcript:

One letter and one check attached to affidavit of Anna R. Heidenhein.

American Railway Express Company receipt; statement of Paul Zibilich Company; four photographs and one letter attached to affidavit of Theodore Grillis.

One letter; one statement; two invoice tags; and one American Railway Express Company receipt attached to affidavit of E. J. Misticos.

One bill of fare; one statement; two Southeastern Express Company receipts; one American Railway Express Company receipt; one statement; one bill of fare; two photographs attached to affidavit of D. J. Goodin.

One statement; one bill of fare attached to affidavit of W. H. Lucas.

One invoice tag; one Southeastern Express Company receipt and one photograph attached to affidavit of Henry Wiedmann.

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE RECALLING TEMPORARY RESTRAINING ORDER AND DENYING COMPLAINANT'S APPLICATION FOR AN INTERLOCUTORY INJUNCTION—Filed January 26, 1928

This cause came on to be heard on the application of complainant for a preliminary injunction, and was submitted upon the pleadings and evidence and argument of counsel, and the Court having considered the same;

It is ordered, adjudged and decreed that the temporary restraining order heretofore issued herein be recalled and set aside, and;

It is further ordered, adjudged and decreed that the application of complainants for an interlocutory injunction herein be and the same is hereby denied.

New Orleans, Louisiana, January 26th, 1928.

(Signed) Rufus E. Foster, United States Circuit Judge; E. R. Holmes, United States District Judge; Louis H. Burns, United States District Judge.

[fol. 125] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 26, 1928

To the Honorable Rufus E. Foster, Circuit Judge, Louis H. Burns and Edwin R. Holmes, District Judges, Composing said Court:

Now come L. O. Johnson, Sr. and the Sea Food Company, complainants, Tanos Hebert and Charles Bordeau, intervening petitioners in the above-entitled cause, and conceiving themselves aggrieved by the order and decree made and entered by the above named Court in the above entitled cause on the 26th day of January, 1928, wherein, among other things, said Court, composed of Judge Rufus E. Foster, Circuit Judge, Judge Louis H. Burns and Judge Edwin R. Holmes, District Judges, under Section 266 of the United States Judicial Code, denied the complainants' application for an interlocutory injunction in said cause and recalled the restraining order previously issued in said cause, do hereby appeal to the Supreme Court of the United States from said order and decree, and especially that portion of it denying and refusing the complainants application for an interlocutory injunction and recalling the order allowing a restraining order previously granted and rendered in said cause, all of which reasons are set forth in the assignment of errors which is filed herewith. In view of the fact that complainants will sustain irreparable harm and damage by reason of the failure and refusal of said Court to grant them an interlocutory injunction, and by reason of the Court's recalling the restraining order previously granted in said cause, these complainants pray that this their petition for appeal may be allowed and that an order be made by said Court pending said appeal in the Supreme Court of the United States reinstating the temporary restraining order previously granted in said cause by the Honorable Louis [fol. 126] H. Burns, District Judge, and granting to the complainants an interlocutory injunction pending the hearing and determination of said cause on appeal to the Supreme Court of the United States.

Complainants further pray that a transcript of the record proceedings and papers upon which said order was made,

duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

Dated this, the 26 day of January, 1928.

(Signed) W. Lee Guice, Gustave Lemle, Watkins, Watkins & Eager, John McCloskey, Attorneys for Complainants L. O. Johnson, Sr. and Sea Food Company.

[fol. 127] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL, ETC.

This day this cause came on to be heard on the application of the complainants and intervenors in the above-entitled cause for an appeal to the Supreme Court of the United States from the decree rendered in this cause by three Judges denying the complainants' application for an interlocutory injunction and recalling the temporary restraining order previously issued by the Honorable Louis H. Burns, District Judge on the 20th day of January, 1928. It is ordered, adjudged and decreed that said appeal be and is hereby allowed; and it appearing to the Court that the complainants will sustain irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from, withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and said restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court, in the penal sum of Ten Thousand Dollars payable to the State of Louisiana, conditioned as provided by law.

Ordered, adjudged and decreed, this the 26th day of Jan., 1928.

(Signed) Rufus E. Foster, Circuit Judge; Louis H. Burns, District Judge; E. R. Holmes, District Judge.

[fol. 128] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed January 26, 1928

Now, come complainants, L. O. Johnson, Sr., and the Sea Food Company, Tanos Herbert, Chas. Bordeaux, intervening petitioners and file the following asignment of errors, upon which they will rely on their appeal from the decree made by this Court on the 26th day of January, 1928, in the above entitled cause:

(1) The Court erred in denying the complainants' application for an interlocutory injunction.

(2) The Court erred in recalling the temporary restraining order granted by the Honorable Louis H. Byrnes, District Judge, upon the 20th day of January, 1928.

(3) The Court erred in not granting an interlocutory injunction to the complainants on their application therefor, and in holding that the complainants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said Louis H. Byrnes, District Judge, as aforesaid.

(5) The Court erred in holding that the complainants were not entitled to the interlocutory injunction applied for.

(6) Other causes to be shown at the hearing.

(Signed) W. Lee Guice, Gustave Lemle, John McCloskey, Watkins, Watkins & Eager.

[fols. 129 & 130] Bond on appeal for $10,000 approved and filed Jan. 26, 1928, omitted in printing.

[fol. 131] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed February 1, 1928

1. Original Bill of Complaint with all exhibits thereto; and petition of intervention.
2. Decree District Judge granting temporary restraining order.
3. Temporary restraining order with returns thereupon.
4. Motion of complainants for interlocutory injunction.
5. Return of all defendants.
6. Each and every affidavit offered by complainants with exhibits thereto.
7. Each and every affidavit offered by defendants with exhibits thereto.
8. Memorandum of all testimony offered in open court by the complainants and the defendants on the hearing of the aplication for interlocutory injunction.
9. Copy of charter of Sea Food Company.
10. Decree permitting the intervention of Tanas Herbert and Charles Bordeau.
11. Order denying application for interlocutory injunction.
12. Petition for appeal to the Supreme Court of the United States, with application for reinstatement of tempoorary restraining order.
13. Decree of three judges allowing appeal, reinstating temporary restraining order.
14. Assignment of error.
15. Bond on appeal.
16. Each and every decree or order entered in the cause [fol. 132] not herein before specifically set out.

(Signed) W. L. Guice, Watkins, Watkins & Eager, Attorneys for Complainants and Intervening Petitioners.

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named

William H. Watkins, of counsel for complainants in the above entitled cause, who by me being duly sworn makes oath that he has this day sent by United States Mail, postage prepaid to the Honorable Percy Saint, Attorney General of the State of Louisiana, at New Orleans, in the State of Louisiana, a true and correct copy of the foregoing præcipe.

(Signed) William H. Watkins.

Sworn to and subscribed before me this 28 day of January, 1928. (Signed) Louis Melton, Notary Public (Seal.)

[fol. 133] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 134-141] Citations in usual form showing service on Ernest Alberti, et al., omitted in printing.

[fols. 142 & 143] UNITED STATES SUPEME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed February 21, 1928

Appellants and plaintiffs in error deem that the parts of the record hereinafter referred to are necessary for a proper consideration of the case:

1. The original bill of complaint with all exhibits thereto.

2. Decree of district judge granting temporary restraining order.

3. Application of plaintiff in error for a permanent injunction.

4. Each and every affidavit offered by plaintiffs in error, with exhibits thereto.

5. Copy of the charter of the Seafood Company.

6. Each and every affidavit offered by defendant in error, with exhibits thereto.

7. Order denying application for interlocutory injunction.

8. Petition for appeal with application for reinstatement of temporary restraining order.

9. Decree of three judges allowing an appeal reinstating temporary restraining order.

10. Assignment of error.

W. H. Watkins, Gustave Lemle, W. L. Guice, Attorneys for Appellants and plaintiffs in error.

[fol. 144] STATEMENT OF APPELLANTS AND PLAINTIFFS IN ERROR UNDER PARAGRAPH 9, RULE 11—POINTS ON WHICH THEY EXPECT TO RELY

Point 1

Act 258 passed at the session of the Louisiana legislature of 1926, approved July 14, 1926, each and every section thereof, especially Sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United States, in that said act, and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error, and each of them, of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

Point 2

Act 258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, and each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, as enforced and construed by the officers of the state of Louisiana, charged with the enforcement of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United

States, in that said act and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error and each of them of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

[fol. 145] Point 3

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, violate paragraph three (3) Section eight (8) Article One (1) of the Constitution of the United States, known as the Commerce Clause of the Constitution of the United States.

Point 4

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, as enforced and construed by the officers of the state of Louisiana charged with enforcement thereof, are in contravention of and violate paragraph three (3) section eight (8) Article one (1) of the Constitution of the United States, known as the Commerce Clause of the Constitution of the United States.

Point 5

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, are in contravention of and violate paragraph one (1) section ten (10) Article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

Point 6

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24

and 29 of said act, as enforced and construed by the officers of the state of Louisiana charged with enforcement thereof, are in contravention of and violate paragraph one (1) section ten (10) Article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

[fol. 146] Point 7

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24, and 29 of said act, and each of them, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 8

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, and each of them, as construed and enforced by the officers of the state of Louisiana charged with enforcement thereof, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 9

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, each and every section thereof, and especially Sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, and each of them, are in contravention of and violate section fourteen (14) article nineteen (19) of the Constitution of the state of Louisiana, prohibiting conspiracies and combinations in restraint of trade, monopolies, etc.

Point 10

The three-judge court should have granted the application of appellants and plaintiffs in error for an interlocu-

tory injunction pending the hearing under the pleadings and proof in the case. Their failing and refusing to do so was error.

[fol. 147] Point 11

The record discloses serious questions of law arising under the federal constitution and serious questions of discrimination supported by affidavits and proof, and that the plaintiffs in error and appellants will sustain serious and irreparable harm and injury by reason of the failure of the three-judge court to grant the application of appellants and plaintiffs in error for an interlocutory injunction pending the hearing. It was, therefore, error not to grant the application of appellants and plaintiffs in error.

Point 12

The granting of the interlocutory injunction prayed for by appellants and plaintiffs in error was required in order to prevent appellants and plaintiffs in error from suffering irreparable harm and injury pending the hearing and determination of the validity of the Louisiana act complained of and each section thereof as being in violation of the federal constitution of the United States hereinbefore referred to, and in view of the seriousness of the alleged charges in respect to the invalidity of said act and the especial sections thereof hereinbefore set out, and in view of the affidavits filed in support thereof, and in view of the irreparable harm, injury and damage which the appellants and plaintiffs in error will suffer by reason of the enforcement of the act, the three-judge court should have granted the application of plaintiffs in error and appellants for an interlocutory injunction pending the hearing and determination in this cause.

Point 13

The hearing and determination of the correctness of the action of the three-judge court in failing and refusing to grant to the plaintiffs in error and appellants an interlocutory injunction pending the hearing of said cause on the merits, this court will accept as true the affidavit and proof offered by the appellants and plaintiffs in error in support of the allegations contained in the original bill of complaint.

[fol. 148] Point 14

In determining as to whether or not the three-judge court committed error in failing and refusing to grant plaintiffs in error and appellants an interlocutory injunction pending the hearing and determination of this cause, on final hearing, this court will consider the affidavits and proof offered by plaintiffs in error and defendants de novo, and will determine for itself as to whether or not the application of appellants and plaintiffs in error should have been granted.

Point 15

Where a state statute is attacked as being in violation of the constitution of the United States, and charges of invalidity are made in good faith, and are serious, or where the allegations and proof contain charges of discrimination in the enforcement of the act, and where the plaintiffs will suffer irreparable harm, injury and damage by reason of the enforcement thereof, an interlocutory injunction should always be granted pending the hearing and determination of the cause on the merits.

Point 16

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, were not passed by the legislature of the state of Louisiana in the legitimate exercise of its police powers, but are a mere subterfuge, and as passed and enforced, directly affect and obstruct interstate commerce between the states and foreign countries.

Point 17

Act #258 passed at the 1926 session of the Louisiana legislature, approved July 14, 1926, and especially sections 2, 3, 13, 14, 15, 21, 22, 23, 24 and 29 of said act, were not passed in the exercise of any legitimate police power of the state of Louisiana, but as passed and enforced were intended and do deprive appellants and plaintiffs in error of their property without due process of law and deny them the equal protection of the law.

[fols. 149 & 150] Point 18

A state, in the exercise of its police power, can pass no law directly affecting interstate commerce.

Point 19

Act #258 passed at the 1926 session of the Louisiana state legislature, and especially sections 2, 3, 14, 15, 21, 22, 23, 24 and 29 of said act, were not passed for the purpose of conserving the natural resources of the state, but passed for the purpose alleged, and in the enforcement and operation thereof necessarily violate the Fourteenth Amendment of the Constitution of the United States, in the particulars hereinbefore set forth, and imposes a direct burden upon interstate commerce.

Point 20

Under the facts in this case and the law applicable thereto the application for interlocutory injunction should have been granted.

——, ——, ——, Attorneys for Plaintiffs in Error and Appellants.

[fol. 151] Received Feb. 21, 1928. Office of the Clerk, Supreme Court U. S.

STATE OF MISSISSIPPI,
Hinds County:

Personally came before the undersigned officer in and for the aforesaid state and county, the within named William H. Watkins, who by me being first sworn, makes oath that he is one of the attorneys for the plaintiffs in error and appellants in the case of L. O. Johnson, Sr., and Seafood Company vs. Louis Meraud et als. being cause No. 769 on the docket of the Supreme Court of the United States, October Term, 1927; that he is authorized to make this affidavit; that upon the 18th day of February, 1928, he sent to the Honorable Percy Saint, Attorney-General of the State of Louisiana, a true and correct copy of the statements and

the points on which appellants and plaintiffs in error expect to rely, in the Supreme Court of the United States, in the prosecution of their appeal in said case, and of the parts of the record which they think necessary for the consideration thereof.

W. H. Watkins.

Sworn to and subscribed before me this the 18th day of February, 1928. M. J. Conerly, Notary Public. (Seal: M. J. Conerly, Notary Public, Hinds County, Mississippi.)

[fol. 152] [File endorsement omitted.]

IN UNITED STATES SUPREME COURT

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed Mar. 2, 1928

Hon. Charles Elmore Cropley:

Print entire record Haydel cases as filed in your office including portions designated by appellants as well as all other portions not designated by them.

Peyton R. Sandoz, Asst. Attorney General, 403 New Court Bldg.

Endorsed on cover: File No. 33,221. E. Louisiana D. C. U. S. Term No. 769. L. O. Johnson, Jr., and Sea Food Company, Tanas Hebert, et al., appellants, vs. E. J. Haydel, Fred Schouest, L. R. Cabriac, et al. Filed February 14th, 1928. File No. 33,221.

FILE COPY

Office Supreme Court, U. S.
FILED
FEB 20 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

6

68 - 69

No. 768 and No. 769 Consolidated.

L. O. JOHNSON ET ALS., COMPLAINANTS-APPELLANTS

against

L. A. MERAUX ET ALS., RESPONDENTS,

and

FOSTER FOUNTAIN CO. ET ALS., COMPLAINANTS-APPELLANTS,

against

E. J. HAYDEL ET ALS., RESPONDENTS.

And now come Percy Saint, Attorney General of the State of Louisiana, Peyton R. Sandoz and M. M. Irwin, Assistant Attorneys General of Louisiana, and John Dymond, Jr., Special Counsel for the Department of Conservation of Louisiana, herein appearing

for and on behalf of Valentine Irion, Conservation Commissioner of the State of Louisiana, L. A. Meraux, Sheriff of the Parish of St. Bernard, Louisiana, and the other respondents in the above cause, and move the court to advance said consolidated causes for hearing on the docket of this Court and to assign them for as early a hearing as possible, for the reasons that these consolidated causes involve the restraining *vel non* of the enforcement of the oyster and shrimp laws of the State of Louisiana, and that a three judge court in the United States District Court for the Eastern District of Louisiana denied interlocutory injunctions in said causes, but in granting appeals to this Court stayed the execution of said laws pending these appeals, and that it is extremely essential to the State of Louisiana, and the Conservation Department thereof, that an early decision by this Court should be had on said appeals, because they affect the revenues and the enforcement of penal laws of the State of Louisiana.

PERCY SAINT,
Attorney General of Louisiana,

PEYTON R. SANDOZ,
Assist. Atty. Gen. of Louisiana,

M. M. IRWIN,
Assist. Atty. Gen. of Louisiana,

JOHN DYMOND, JR.,
Special Counsel,
Attorneys for Respondents.

We take cognizance of the above motion, waive notice thereof and consent to and concur therein.

W. H. WATKINS,
W. L. GUICE,
GUSTAVE LEMLE,
JOHN McCLOSKY,
Attorneys for Complainants-Appellants.

ORDER.

Considering the above motion by respondents herein, and the concurrence of complainants-appellants herein,

IT IS ORDERED that the consolidated causes entitled Foster Fountain Co. *et al. versus* E. J. Haydel *et al.*, and L. O. Johnson *et al. versus* L. A. Meraux *et al.*, Nos. 768 and 769, October term, 1927, consolidated, be and the same are hereby assigned and set down for hearing —— —, 1928.

WASHINGTON, D. C., *February* 20, 1928.

Chief Justice Supreme Court of the United States.

FILE COPY

Office Supreme Court, U. S.
FILED
FEB 20 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 769 69

L. O. JOHNSON ET ALS., COMPLAINANTS-APPELLANTS,

against

L. A. MERAUX ET ALS., RESPONDENTS.

And now come Percy Saint, Attorney General of the State of Louisiana; Peyton R. Sandoz, and M. M. Irwin, Assistant Attorneys General of Louisiana, and John Dymond, Jr., Special Counsel for the Department of Conservation of Louisiana, herein appearing for and on behalf of Valentine Irion, Conservation Commissioner of the State of Louisiana; L. A. Meraux, Sheriff of the Parish of St. Bernard, Louisiana, and the other respondents in the above cause, and move the court to consolidate this cause with the cause entitled Foster Fountain Co. *et al. against* E. J. Haydel *et al.*, No. 768, October term, 1927, of this Court, for the reason that both of said appeals came up from

the District Court of the United States for the Eastern District of Louisiana, from decrees denying interlocutory injunctions to restrain the enforcement of the oyster and shrimp laws enacted by the Legislature of the State of Louisiana, being Acts 258 and 103 of the Legislative Session of 1926, and the subject-matter in both causes being for all practical purposes identical, and involving identical constitutional questions.

PERCY SAINT,
Attorney General of Louisiana,

PEYTON R. SANDOZ,
Assist. Atty. Gen. of Louisiana,

M. M. IRWIN,
Assist. Atty. Gen. of Louisiana,

JOHN DYMOND, JR.,
Special Counsel,
Attorneys for Respondents.

We take cognizance of the above motion, waive notice thereof and consent to and concur therein.

W. H. WATKINS,
W. L. GUICE,
GUSTAVE LEMLE,
JOHN McCLOSKY,
Attorneys for Complainants-Appellants.

ORDER.

Considering the motion by respondents herein and the concurrence of complainants-appellants therein, it

is ordered that this cause be and it is hereby consolidated with cause entitled Foster-Fountain Company *et al. against* E. J. Haydel *et al.*, No. 768 of the docket of this Court, October term, 1927, the records to be printed separately.

Chief Justice Supreme Court
of the United States.

WASHINGTON, D. C., *February* 20, 1928.

FILE COPY

Nos. ~~768~~ and ~~769~~ 68 - 69

FILED
MAR 28 1928
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

8

No. 768.

FOSTER FOUNTAIN PACKING COMPANY, INC., AND SEA FOOD COMPANY, *Appellants,*

vs.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC ET AL.

No. 769.

L. O. JOHNSON, JR., and SEA FOOD COMPANY, TANAS HEBERT ET AL., *Appellants,*

vs.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC ET AL.

STATEMENT AND BRIEF FOR APPELLANTS

WILLIAM H. WATKINS,
GUSTAVE LEMLE,
W. LEE GUICE,
Attorneys for Appellants.

WATKINS, WATKINS & EAGER,
LEMLE, MORENO & LEMLE,
RUSHING & GUICE,
Of Counsel.

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POINT I

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or towns of that state game fit for food, that has been lawfully killed and is lawfully in the possession of the keeper of such market, he may without becoming a criminal buy such game and take it into his possession, provided his intention be to eat it or to have it eaten in Connecticut. But he will subject himself to a fine, as well as to imprisonment upon his failing to pay such fine, if he buys and takes possession of such lawfully killed game with intent to send it to a friend in an adjoining state.

"The court cites *McCready v. Virginia*, 94 U. S. 395 (24: 248), in which it was held that Virginia could restrict to its citizens the privilege of *planting* oysters in the streams of that state, the soil under which was owned by it. But I cannot believe that it would hold that oysters which had been lawfully taken out of such streams and which had been lawfully planted, could not be purchased in Virginia with the intent to ship them to another state. This court in *Plumley v. Massachusetts*, 155 U. S. 461 (39: 223), another of the cases cited by the majority, sustained as valid a statute of Massachusetts, enacted to prevent deception in the manufacture and sale in that state of imitation butter, and which prohibited the sale of oleomargarine, artificially colored so as to cause it to look like genuine yellow butter. But I cannot suppose that this court will ever hold that a state could make it a crime to purchase with the intent to send it to another state oleomargarine or genuine yellow butter that had been lawfully manufactured within its limits."

As above stated, we are making no attack upon the main opinion in the case. We submit, however, that the doctrine announced should not be extended.

The frontier of valid state legislation in the legitimate exercise of its police power for the purpose of conserving its natural resources is marked in that opinion, and we do urge upon the court that the principles be not further extended. In order to sustain the legislative enactments under review in this case, it will be necessary for the court to extend beyond any limit which has heretofore been reached the right of the state in the exercise of its alleged police power, through the conservation of its natural resources, to regulate the transportation of such commodities in interstate commerce.

Suppose that in the Geer case, supra, the act had provided that the birds should be picked of their feathers and dressed in Connecticut, and after such action was taken, then every particle of the bird could be shipped in interstate commerce without limitation or restriction. If the Geer case had contained any such provisions, the same would have been identical in principle with this case. The statutes under review do not require that either the shrimp or the oysters or any part thereof be kept within the limits of the state as a food or other useful product for the benefit of the people of the state.

Section 13 of the "Shrimp Act" contains the following language:

> ". . . the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the state in and to said

shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limit of the state, without restriction or reservation."

Here is an expressed legislative declaration that the meat of the shrimp are not intended to be conserved as a food for the benefit of the people of the State of Louisiana. Upon the other hand, the act expressly provides that whenever the heads and the hulls are taken off that the meat, that is to say, everything except the heads and the hulls, may be shipped in interstate commerce *without restriction or reservation.* In other words, may be shipped in unlimited quantities without reservation of any benefit thereof as a food for the people of the State of Louisiana.

When we turn now to the remaining portion of the section, the act makes it unlawful to ship raw shells or hulls from the state, the section containing a declaration that they are required to be manufactured into fertilizer or used for an element in chicken feed. We call your honors' attention to the fact that after this is done no portion thereof is conserved for the use and benefit of the people of the state. Upon the other hand, the act expressly permits every particle thereof to pass into interstate commerce. The remaining portion of the act is as follows:

"When the shrimp hulls or shells and heads shall have been conserved for the purposes herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof. Any person, firm or corporation violating the provisions of this section shall be liable to the penalties hereinafter imposed." Sections 2 and 3 of the "Oyster Act" are similar in language and identical in legislative purpose.

While the act ostensibly requires the hulls of shrimp and the shells of oysters to be used as stated in the act, no punishment is attached for a failure so to do, and the proof is that as to the shrimp, the almost universal custom exists of casting the same into the bayous and lakes, and that such negligible portion of the heads and hulls of the shrimp as is manufactured into shrimp bran by a drying process is immediately shipped out of the state in interstate commerce; and the same facts apply to the oyster shells. Under the act it is a matter of indifference to the State of Louisiana whether the hulls and shells are in fact used by the people of Louisiana within the state or not. As to the oysters, the proof shows that many of them are thrown out and wasted, large quantities shipped to Texas in the rough state for the building of roads, and where any part of the oyster shells are manufactured into chicken feed, the product is shipped out of the state. It is perfectly apparent, therefore, that the acts were not passed for the purpose of conserving to the people of Louisiana its natural resources. The statutes do not rest upon the principle announced in the Geer case, supra.

In the Geer case the people of Connecticut announced that the birds were needed in the state as a food for its people. In the present case the Legislature of Louisiana announces by the necessary effect of what is permitted by the act, that it does not need any part of the shrimp or oysters in the state, but that every particle thereof may go out, provided the manufacturing plants are moved from Mississippi to Louisiana territory.

The territory involved in this suit was acquired by the United States from France and was conveyed to the sovereign state of Louisiana by the Act of Congress dated February 20, 1811, creating Louisiana as a state. The argument which we contend for is especially

applicable since in granting this territory to the state of Louisiana the grant was made subject to the Constitution of the United States, which is the supreme fundamental law of the land.

In the case of *U. S. of America v. Holt State Bank*, 270 U. S. 49, 70 L. ed. 465, the following rule is announced in respect to the title of the states in navigable waters.

> "It is settled law in this country that lands underlying navigable waters within a state belong to the state in its sovereign capacity and may be used and disposed of as it may elect, subject to the paramount power of Congress to control such waters for the purposes of navigation in commerce among the states and with foreign nations, and subject to the qualification that where the United States, after acquiring the territory and before the creation of the state, has granted rights in such lands by way of performing international obligations, or effecting the use or improvement of the lands for the purposes of commerce among the states and with foreign nations, or carrying out other public purposes appropriate to the objects for which the territory was held, such rights are not cut off by the subsequent creation of the state, but remain unimpaired, and the rights which otherwise would pass to the state in virtue of its admission into the Union are restricted or qualified accordingly. *Barney v. Keokuk*, 94 U. S. 324, 338, 24 L. Ed. 224, 228; *Shriveley v. Bowlby*, 152 U. S. 1, 47, 48, 57, 58, 38 L. Ed. 331, 348, 349, 352, 14 Sup Ct. Rep 548; *Scott v. Lattig*, 227 U. S. 229, 242, 57 L. Ed. 490, 496, 44 L. R. A. (N.S.) 107, 33 Sup. Ct. Rep. 242; *Seattle v. Oregon & W. R. Co.* 255 U. S. 56, 63, 65 L. Ed. 500, 506, 41 Sup. Ct. Rep. 237; *Brewer-Elliott Oil & Gas Co. v. United States*, 260 U. S. 77, 83-85, 67 L. Ed. 140, 144, 43 Sup. Ct. Rep. 60."

The identical question was decided adversely to the defendants in error by the Supreme Court of Louisiana in the case of *State v. Ferrandau*, 58 So. 870. Section 1, Act No. 189, Louisiana Legislature of 1910 contained the following provision:

> "That all beds and bottoms of rivers, bayous, lagoons, lakes, bays, sounds and inlets, bordering on, or connecting with, the Gulf of Mexico, and that part of the Gulf of Mexico within the jurisdiction of the state of Louisiana, including all natural oyster reefs and oysters and other shell fish growing thereon shall be construed and remain the property of the State of Louisiana, except as otherwise provided, and shall be under the exclusive control of the board of commissioners for the protection of birds, game and fish. The board may permit the use of said bottoms and reefs for the purpose of fishing, taking, bedding and raising oysters and other shell fish, subject to the restrictions imposed by law and the regulations of said board in so far as they do not conflict with the laws of the state. No grant, sale or conveyance of the lands forming the bottoms of said bodies or streams of water shall, hereafter, be made by the Register of the State Land Office, by any other official, or by any subordinate political corporation. Persons, firms, or corporations domiciled in this state, with their factories, shucking plants and shipping depots, located therein, may enjoy the right of fishing oysters from the natural reefs and leased bedding grounds whenever they have complied with the rules and regulations of said board; provided such oysters be canned and shucked or packed in this state, or shipped raw, in shells, from a shipping depot in this state, but no person, firm or corporation shall ship oysters out of this state for canning or packing out of this state."

The Supreme Court of Louisiana, speaking through Mr. Justice Monroe, held that the act was not one in the exercise of the legitimate police power of the state, but held that the act was a regulation of interstate commerce and void, using the following language:

> "It will thus be seen that the law contemplates that the oyster shall be a commodity of commerce, and specifically provides that they may be packed and canned, and shipped in that condition or raw, in the shells, from a shipping port in this state, and that they may be, and as the admitted facts in this case show, are, lawfully sold and bought, in the open market, by any one who may choose to engage in the traffic, and hence may be bought by citizens of other states. The contention, however, seems to be that it is competent for the State of Louisiana to attach to the shipments, thus specifically authorized, the condition that they shall not be made with a view to the canning or packing of the oysters 'out of this state.'
>
> "In other words, a citizen of Louisiana who buys, in open market in this state, oysters 'grown in private beds' or elsewhere, which are lawfully sold, may take them to his home and there sell, consume, pack or can, and (either before or after they are packed or canned) ship them to another state; but the citizen of another state, who also buys such oysters in the open market, is prohibited from taking, or shipping them to his home, if his intention is there to pack or can them. So that the state, having made the oyster a commodity of interstate commerce, assumes to regulate and control such commerce, as those who engage in it may be actuated by one purpose or another; saying to the one shipper, 'As your purpose is that your buyers and consignees, living out of the state, shall sell or consume the oysters which you sell and ship to them, your trade is

lawful;' and to the other, 'As your purpose is that your buyers and consignees, or that you, yourself, shall pack or can, out of the state, the oysters shipped by you, your trade is unlawful;' and saying to all, 'The oysters produced in Louisiana, whether in private beds or elsewhere, may be packed and canned, but whilst such packing and canning is lawful if done within the state, their shipment, for the purpose of packing or canning them, out of the state, is unlawful.'

"Conceding (arguendo) that the state may prohibit, altogether, the shipment of oysters beyond her borders, whether 'grown in private beds' or elsewhere, she has not done so. To the contrary, any one may ship all that he chooses, provided only, that those which have not already been so dealt with shall not be shipped for packing and canning, out of the state, may ship all that they choose in that form and for any purpose. It is not a question, therefore, of the number or quantity that may be shipped, but a question of forcing all those who are engaged in the oyster trade to pack and can, or to have packed and canned, all the oysters produced in Louisiana, which they propose to sell in that form, packed and canned in Louisiana packeries and canneries, in order, as our learned brother says, 'to increase the valuable assets of the state * * * and thus add to the revenues of the state.'

"There can be no question, as it appears to us, that this is to impose a regulation upon interstate commerce, (those who buy, and sell and ship being engaged in that business, as well as the carriers, who merely transport their goods), for it is to lay an embargo upon the trader who may wish to ship a limited number of oysters, to be packed and canned elsewhere, whilst permitting another to ship an unlimited number, which have

been packed or canned within the state, for any other purpose whatever. The only remaining question is whether such regulation is permissible, as incidental to the object which it is designed to accomplish. And that question, we think, must be answered in the negative.

"The states, for the enforcement of their quarantine and inspection laws, the right to enforce which is reserved to them by the Constitution, may impose conditions which operate as regulations of interstate and foreign commerce; and so, in the legitimate exercise of their police power, which is a term of wide significance, but we know of no instance in which it has been held that a state may regulate such commerce merely that its revenue may be increased.

"The right of a state to prohibit the possession, during a closed season, within its borders, of game birds, taken in other jurisdictions, was a question upon which the courts differed, until it was finally settled by an act of Congress authorizing the exercise of such power. *People ex rel. Hill v. Hesterberg*, 184 N. Y. 126, 76 N. E. 1032, 3 L. R. A. (N.S.) 163, 128 Am. St. Rep. 528, 6 Ann. Cas. 353. The right of a state to prohibit, during the open season, the exportation of such birds, killed within its borders, was decided in the affirmative in *Geer v. State of Conn.*, 161 U. S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793, and it was there held that: 'Although the killing of game and its sale within the state are allowed, it does not thereby necessarily become the subject of interstate commerce in the legal meaning of those words.'

"The prohibition was, however, general, and the court, additionally, held that: 'The police power of the state to preserve game birds, as a

valuable food supply for its people, justifies a statute prohibiting the transportation of such birds beyond the state, even if interstate commerce may be remotely affected.'

"Here, the apparent purpose is not to preserve a valuable food supply, but to secure to those so engaged, in this state, a monopoly of the business of packing and canning Louisiana oysters, and thereby increasing the assessable property and revenues of the state.

"In *McReady v. Virginia*, 94 U. S. 291, 24 L. Ed. 248, Waits, C. J., said: 'The precise question to be determined in this case is whether the State of Virginia can prohibit the citizens of other states from planting oysters in Ware River, a stream in that state where the tide ebbs and flows, when its own citizens have that privilege. * * * There is here no question of transportation or exchange of commodities, but only of cultivation and production.'

"In *Turner v. State of Maryland*, 107 U. S. 38, 2 Sup. Ct. Rep. 44, 27 L. Ed. 370, a statute of the state of Maryland, providing for the packing and inspection, or marketing without inspection, of tobacco grown in that state, was held not to be in contravention to the commerce clause of the Constitution of the United States; but the statute was general in its application and did not undertake to regulate shipments of tobacco with regard to the purpose of the shipper or consignee.

"On the other hand, in *Robbins v. Taxing District*, 120 U. S. 489, 7 Sup. Ct. Rep. 592, 30 L. Ed. 694, it was held that (quoting from the syllabus): 'The negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce.'

"The negotiation, therefore, in Mississippi, of the sale of oysters, which are in Louisiana, (and being lawfully sold there in open market, for the purpose of introducing them into Mississippi, is interstate commerce, and a condition, imposed by the law of Louisiana, that one buyer in Mississippi shall have his oysters shipped to him provided he intends to make this use of them, and another buyer may have his shipped, provided he intends to make that use, is a regulation of that commerce, within the law, as we understand it, vesting such power of regulation in Congress; nor do we think that, as applied to this case, it affects the discriminating character of the regulation, that the oysters were bought in New Orleans, by defendant, and shipped by him to the canning company, in Biloxi, for which he purchased, or to which he sold, them.

"In *Brimmer v. Rebman*, 138 U. S. 78, 11 Sup. Ct. 213, 34 L. Ed. 862, it was held that: 'A state can not, under the guise of exerting its police powers, or of enacting inspection laws, make discriminations against the products and industries of its own or of other states.

"Nor can a state, with reference to persons engaged in interstate commerce, make discriminations in favor of those who patronize its industries and those who patronize the industries of other states.

"We are therefore of the opinion that the demurrer should have been sustained, and it is, accordingly, ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed; that the demurrer filed by the defendant be sustained; and that he be discharged without delay."

This case was expressly referred to with approval by this Court in the case of *Lacoste v. Department of Conservation*, 263 U. S. 545, 68 L. Ed. 437. In that case a severance tax was imposed by the State of Louisiana upon the skins of all wild game taken within the state. A dealer in such skins, who bought the same within the state with the intention thereafter to sell the same in interstate commerce, contested the act upon the ground that the tax was one imposed upon interstate commerce. This Court found, however, that the tax imposed was not one for revenue, but for the purpose of bearing the expenses of the conservation department, in the exercise of its legitimate police power, and further found that there was no transportation in interstate commerce; that while the dealer may have intended at some time to ship the commodity in interstate commerce, that there was no moving in interstate commerce in any sense at the time. The court used the following language:

> "Whether the tax here involved might be upheld by virtue of the power of the state to prohibit, and therefore to condition, the removal of wild game from the state, we do not now consider, but dispose of the case upon other grounds. The commerce clause (Art. 1, Sec. 8, Clause 3), confers on Congress power to regulate interstate and foreign commerce, and therefore such power is impliedly forbidden to the states. 'Even their power to lay and collect taxes, comprehensive and necessary as that power is, can not be exerted in a way which involves a discrimination against such commerce.' *Pennsylvania v. West Virginia*, 262 U. S. 553, 596, 67 L. Ed. 1117, 1132, 32 A. L. R. 300, 43 Sup. Ct. Rep. 658, and cases cited; *Kansas City., Ft. S. & M. R. Co. v. Botkin*, 240 U. S. 227, 231, 60 L. Ed. 617, 818, 36 Sup. Ct. Rep. 261; *Brimmer v. Rebman*, 138 U. S. 78, 82, 34 L. Ed. 862, 863, 3 Inters. Com. Rep. 485, 11 Sup. Ct. Rep. 213; *Elmer v. Wallace*, 275 Fed. 86, 90;

> *State v. Ferrandau*, 130 La. 1035, 1041, 58 So. 870, Ann. Cas. 1913 D, 1170. *A state may not enforce any law, the necessary effect of which is to prevent, obstruct or burden interstate commerce. Pennsylvania v. West Virginia*, supra, 596, 597, and cases cited."

The fact that the State of Louisiana in the *Ferrandau* case, supra, has expressly adjudicated that such an act, having for its purpose that of compelling manufacturers of oysters to establish factories within the state, is not a legitimate exercise of the police power of the state, we respectfully submit is binding upon this court; that is to say, what is a proper exercise of police power on the part of the state is a judicial question, and it is within the province of the highest court of a state to mark for the state the limit of its exercise. Of course, the decision of the state court would not be binding on this Court, but it is binding upon the state court.

In *Corpus Juris*, Volume 15, page 927, the following rule is announced:

> "Where a question as to the construction or effect of the constitution or statutes of a state arises in the courts of another state or of the United States, such courts should follow the decisions of the court of last resort of the state whose constitution or statutory provisions are involved, even though they would be inclined to place a different or even an opposite construction upon a similar provision if it appeared in the constitution or statutes of their own state."

It is well established that this court is bound by the construction of the Supreme Court of a state on its own statutes. *Stebbins v. Riley*, 268 U. S. 137, 69 L. ed. 884; *Central Union Telephone Co., v. Edwardsville*, 269, U. S. 190 70 L. ed. 229; *Chas. Wolf Packing Co. v. Court of Industrial Relations*, 267 U. S. 555, 69 L. Ed. 758; *North Land Company v. Hoffman*, 268, U. S. 276, 69 L. Ed. 953.

In other words, the Supreme Court of the State of Louisiana, in its latest utterance upon this subject, has denounced such legislation as not being a legitimate exercise of the police power of the state and as being in contravention of interstate commerce. Of course, the decision of the Supreme Court of Louisiana is not binding upon your honors as to whether or not the act interfered with interstate commerce, though the same may be highly persuasive. However, as marking the limit of the state's police power, the decision is conclusive.

It is well settled by repeated decision of this Court that a state can pass no law, whatever may be its purpose, which places a direct burden upon interstate commerce. In the case of *Hall v. Josephine De Cuir*, 95 U. S. 485, 24 L. Ed. 547, a statute of the State of Louisiana provided that a steamboat carrying passengers should carry all persons applying for passage, without discrimination as to color. The act gave the carrier, however, the right to reject immoral or offensive passengers. The plaintiff, a colored woman, applied for passage and demanded that she be admitted to the first class cabin. She was excluded therefrom and brought suit for damages under that statute. The vessel was engaged in interstate commerce, and this Court held that the Louisiana statute was void as a regulation thereof, using the following language:

> "But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instrument to be employed after coming within the State, but directly upon the business as it comes into the State from without or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his

conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect, in a greater or less degree, those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced.

"It was to meet just such a case that the commercial clause in the Constitution was adopted. The River Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if, on one side of a state line, his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be gov-

erned from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammeled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be. If this statute can be enforced against those engaged in interstate commerce, it may be as well against those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board would be compelled to carry all, white and colored, in the same cabin during his passage down the river, or be subject to an action for damages 'exemplary as well as actual,' by one who felt himself aggrieved because he had been excluded on account of his color."

In the case of *Weber v. Virginia,* 103 U. S. 344, 26 L. Ed. 563, it presented for review a statute which placed a privilege tax of one amount upon a merchant selling as commission agent sewing machines manufactured within the state, and an entirely different license for the sale under similar circumstances of sewing machines manufactured without the state. This Court held that a direct burden was created upon interstate commerce, that the statute was void, using the following language:

"By these sections, read together, we have this result: the agent for the sale of articles manufactured in other states must first obtain a license to sell, for which he is required to pay a specific tax for each county in which he sells or offers to sell them; while the agent for the sale of articles manufactured in the State, if acting for the manufacturer, is not required to obtain a license or pay any license tax. Here there is a clear discrimination in favor of home manufacturers, and against the manufacturers of other state. Sales by manufacturers are chiefly effected through agents. A tax upon their agents when thus engaged is, therefore, a tax upon

them, and if this is made to depend upon the foreign character of the articles, that is, upon their having been manufactured without the state, it is to that extent a regulation of commerce in the articles between the States. It matters not whether the tax be laid directly upon the articles sold or in the form of licenses for their sale. If by reason of their foreign character the State can impose a tax upon them, or upon the person through whom the sales are effected, the amount of the tax will be a matter resting in her discretion. She may place the tax at so high a figure as to exclude the introduction of the foreign article, and prevent competition with the home product. It was against legislation of this discriminating kind that the framers of the Constitution intended to guard, when they vested in Congress the power to regulate commerce among the several states.

"In *Welton v. Missouri*, 91 U. S. 275 (XXIII., 347) we expressed at length our views on the subject, and to our opinion we may refer for their statement. No one questions the general power of the State to require licenses for the various pursuits and occupations conducted within her limits, and to fix their amount as she may choose, and no one on this bench—certainly not the writer of this opinion—would wish to limit or qualify it in any respect, except when its exercise may impinge upon the just authority of the Federal Government under the Constitution, or the limitations prescribed by that instrument. But where a power is vested exclusively in that government, and its exercise is essential to the perfect freedom of commercial intercourse between the several states, any interfering action by them must give way. This was stipulated in the indissoluble covenant by which we became one people."

In the case of *Lake Shore Railroad Co. v. State of Ohio*, 173 U. S. 285, 43 L. Ed. 702, there was under review a statute of the State of Ohio which required an interstate railroad company to stop three of its trains daily at each and every city or village within the state containing more than 3,000 inhabitants. This Court held the act unconstitutional as a direct burden upon interstate commerce.

The question was presented in the case of *State of Missouri v. Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. ed. 1027. In that case the gas company was engaged in transporting through pipelines gas from Oklahoma and Kansas into Missouri. The Public Utilities Commission of the State of Missouri undertook to fix the cost of the transportation. The gas company increased the price fixed by the Commission from 35 cents to 40 cents per thousand cubic feet. The question presented in the case was as to the power of the State of Missouri, acting through its Utilities Commission, to fix the rate. This Court held that there was a direct burden upon interstate commerce, using the following language:

> "The business of the Supply Company, with an exception not important here, is wholly interstate. The sales and deliveries are in large quantities, not for consumption, but for resale to customers. There is no relation of agency between the Supply Company and the distributing companies, or other relation except that of seller and buyer. (*Public Utilities Commission v. Landon*, 249, U. S. 236, 244, 245, 63 L. Ed. 577, 585, 586, P. U. R. 1919C, 834, 39 Sup. Ct. Rep. 268), and the interest of the former in the commodity ends with its delivery to the latter, to which title and control thereupon pass absolutely. The question is, therefore, presented in its simplest form; and if the claim of state power be upheld, it is difficult to see how it could be denied in any case of interstate transportation and sale of gas. Both Federal Courts denied the power. The state court

conceded that the business was interstate and subject to Federal control, but rested its decision the other way upon the fact that Congress had not acted in the matter, and that, in the absence of such action, it was within the regulating power of the state. The question is controlled by familiar principles. Transportation of gas from one state to another is interstate commerce; and the sale and delivery of it to the local distributing companies is a part of such commerce. In *Public Utilities Commission v. Landon,* supra, at p. 245, this court said: 'That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also, it is clear that, as part of such commerce, the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state.' See *Pennsylvania v. West Virginia,* 262 U. S. 553, 596, 67 L. Ed. 1117, 1132, 32 A. L. R. 300, 43 Sup. Ct. Rep. 658, and cases there cited."

The case of *Ozark Pipe Line Co. v. Monier,* 266 U. S. 555, 69 L. Ed. 439, presented a case where the State of Missouri attempted to levy a tax in support of its state government on oil passing through the state in pipes to another state. This court held that the tax could not be sustained, using the following language:

"The tax is one upon the privilege or right to do business (*State ex rel. Marquette Hotel Invest. Co. v. State Tax Commission,* 282 Mo. 213, 234, 221 S. W. 721); and if appellant is engaged only in interstate commerce, it is conceded, as it must be, that the tax, as far as appellant is concerned, constitutionally cannot be imposed. It long has been settled that a state cannot lay a tax on interstate commerce in any form,—whether on the transportation of subjects of commerce, the receipts derived therefrom, or the occupation or business of carrying

it on. *Leloup v. Mobile,* 127 U. S. 640, 648, 32 L. Ed. 311, 314, 2 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; *Kansas City, Ft. S. & M. R. R. Co. v. Botkin,* 240 U. S. 227, 231, 60 L. Ed. 617, 618, 36 Sup. Ct. Rep. 261, and cases cited. Plainly, the operation of appellant's pipe line is interstate commerce, and beyond the power of state taxation. *Eureka Pipe Line Co. v. Hallanan,* 257 U. S. 265, 272, 66 L. ed. 227, 231, 42 Sup. Ct. Rep. 101; *United Fuel Gas Co. v. Hallanan,* 257 U. S. 277, 66 L. ed. 234, 42 Sup. Ct. Rep. 105."

In the case of *Michigan Utilities Commission vs. Duke,* 266 U. S. 570, 69 L. Ed. 445, this Court held that where a corporation was engaged in transporting merchandise for a single manufacturer from one state to another, could not convert the business into that of a common carrier. The court used the following language:

"The act would put on plaintiff the duty to use his trucks and other equipment as a common carrier in Michigan, and would prevent him from using them exclusively to perform his contracts. This is to take from him use of instrumentalities by means of which he carries on the interstate commerce in which he is engaged as a private carrier, and so directly to burden and interfere with it. See *Kansas City Southern R. Co. v. Kaw Valley Drainage Dist.,* 233 U. S. 75, 78, 79, 58 L. Ed. 857-859, 34 Sup. Ct. Rep. 564; *Atlantic Coast Line R. Co. v. Wharton,* 207 U. S. 328, 334, 52 L. Ed. 230, 234, 28 Sup. Ct. Rep. 121; *Illinois Central R. Co. v. Illinois,* 163 U. S. 142, 153, 41 L. Ed. 107, 111, 16 Sup. Ct. Rep. 1096. And it is a burden upon interstate commerce to impose on plaintiff the onerous duties and strict liability of common carrier, and the obligation of furnishing such indemnity bond to cover the automobile bodies hauled under his contracts as conditions precedent to his right to continue to carry them in interstate

commerce. See *Barrett v. New York*, 232 U. S. 14, 33, 58 L. Ed. 483, 491, 34 Sup. Ct. Rep. 203. Clearly, these requirements have no relation to public safety or order in the use of motor vehicles upon the highways, or to the collection of compensation for the use of the highways. The police power does not extend that far. It must be held that, if applied to plaintiff and his business, the act would violate the commerce clause of the Constitution.

"Moreover, it is beyond the power of the state by legislative fiat to convert property used exclusively in the business of a private carrier into a public utility, or to make the owner a public carrier, for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clause of the 14th Amendment. *Producers Transp Co. v. Railroad Commission*, 251 U. S. 228, 230, 64 L. Ed. 239, 241, P. U. R. 1920C, 574, 40 Sup. Ct. Rep. 131; *Chas. Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522, 535, 67 L. Ed. 1103, 1108, 27 A. L. R. 1280, 43 Sup. Ct. Rep. 630. On the facts above referred to, it is clear that, if enforced against him, the act would deprive plaintiff of his property, in violation of that clause of the Constitution."

In the case of *Di Santo v. Pennsylvania*, 273 U. S. 34, 71 L. Ed. 524, presented for review the act of the Legislature of the State of Pennsylvania requiring any person selling steamship tickets or orders for transportation to or from foreign countries to take out a license. The plaintiff in error was so engaged, was indicted, tried and convicted. This Court held that the act was a direct burden upon interstate commerce, and that a state could not pass a law for any purpose which placed a direct burden upon interstate commerce. The court used the following language:

"A state statute which by its necessary operation directly interferes with or burdens foreign commerce is a prohibited regulation and invalid, regardless of the purpose with which it was passed. *Shafer v. Farmers Grain Co.* 268 U. S. 189, 69 L. Ed. 909, 914, 45 Sup. Ct. Rep. 481, and cases cited. Such legislation can not be sustained as an exertion of the police power of the State to prevent possible fraud. *Real Silk Hosiery Mills v. Portland,* 268 U. S. 325, 336, 69 L. Ed. 982, 985, 45 Sup. Ct. Rep. 525. The Congress has complete and paramount authority to regulate foreign commerce and, by appropriate measure, to protect the public against the frauds of those who sell these tickets and orders. The sales here in question are related to foreign commerce as directly as are sales made in ticket offices maintained by the carriers and operated by their servants and employees. The license fee and other things imposed by the Act on plaintiff in error, who initiates for his principals a transaction in foreign commerce, constitute a direct burden on that commerce. This case is controlled by *Texas Transport & Terminal Co. v. New Orleans,* 264 U. S. 150, 68 L. Ed. 611, 34 A. L. R. 907, 44 Sup. Ct. Rep. 242, and *McCall v. California,* 136 U. S. 104, 34 L. Ed. 391, 3 Inters. Com. Rep. 181, 10 Sup. Ct. Rep. 881."

THE LEGISLATURE OF A STATE CANNOT, UNDER THE GUISE OF EXERCISING ITS POLICE POWER, DIRECTLY INTERFERE WITH INTERSTATE COMMERCE.

It is the contention of plaintiffs in error that the acts in question were not passed by the legislature of the state of Louisiana in the exercise of its legitimate police power; that the acts in question were not passed with a view to conserving the natural resources of the state; that the acts have no relation to the conservation of the natural resources of the state; that the acts are

mere subterfuges, attempted to be clothed with appropriate language which was done to make them appear as conservation measures, but in fact, they were passed for some ulterior purpose, and in their natural enforcement were intended to, and do, place a direct burden upon interstate commerce between the states. If a state legislature proposed to pass a law ostensibly in the exercise of its legitimate power, it is to be expected, in the light of past experience, as revealed by a study of your Honors' decisions, that such state legislature would endeavor, by appropriate expressions, to clothe the act with such garments as would make it appear to be the genuine thing, but as your Honors have umpired the game between the states in their efforts at local self-government, we find that it has frequently become necessary for your Honors to cast aside the declared purposes of such legislatures in passing certain acts in order that constitutional rights might be protected, and especially has such been true in the effort of this court in the exercise of its judicial functions, to prevent a state legislature from placing a direct burden upon interstate commerce. Notwithstanding the phraseology which the legislature of the State of Louisiana has used in the passage of the acts in question, notwithstanding the smug expressions of and for the necessity for conservation, it is perfectly apparent that these acts were passed for the avowed purpose of requiring plants and factories packing shrimp and canning oysters for shipment in interstate commerce, to erect such plants on Louisiana territory, and after so doing such plants are permitted, without *restriction* or *reservation,* to ship the commodities manufactured in interstate commerce.

The following authorities are directly in point:

John A. Brimmer v. Rebman, 138 U. S. 78, 34 L. ed. 862. In that case the state of Virginia passed an act regulating meat shipped into the state, which contained the following language:

"It shall be the duty of any and all persons, firms or corporations, before offering for sale in this state fresh meats, which, under the provisions of this act, are required to be inspected, to apply to the fresh meat inspector of the county or city where the same is proposed to be sold and have said meat inspected; and for a failure to do so, or for offering to sell any fresh meats condemned by said inspector, the person, firm or corporation so selling or offering to sell shall be fined not less than fifty nor more than one hundred dollars for each offense, to be recovered by any justice of the peace of the county or city where the violation occurs; provided, that in cities of fifteen thousand inhabitants or more, one-half of the fees of inspectors shall be paid into the state treasury; and provided, further, that nothing in this act shall apply to the Counties of Accomac and Northampton."

The court held that the act was a direct burden upon interstate commerce and could not be sustained, using the following language:

"The recital in the preamble that unwholesome meats were being offered for sale in Virginia can not conclude the question of the conformity of the act to the Constitution. 'There may be no purpose,' this court has said, 'upon the part of a legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the constitution;' in which case, 'the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void.' *Minnesota v. Barber,* 134 U. S. 313, 319, (34:455, 457), and authorities there cited. Is the statute now before us liable to the objection that, by its necessary operation, it interferes with the enjoyment of rights granted or secured by the Consti-

tution? This question admits of but one answer. The statute is, in effect, a prohibition upon the sale in Virginia of beef, veal or mutton, although entirely wholesome, if from animals slaughtered one hundred miles or over from the place of sale. We say prohibition, because the owner of such meats can not sell them in Virginia until they are inspected there; and being required to pay the heavy charge of one cent per pound to the inspector, as his compensation, he can not compete, upon equal terms, in the markets of that commonwealth, with those in the same business, whose meats, of like kind, from animals slaughtered within less than one hundred miles from the place of sale, are not subjected to inspection at all. Whether there shall be inspection or not, and whether the seller shall compensate the inspector or not, is thus made to depend entirely upon the place where the animals, from which the beef, veal or mutton is taken, were slaughtered. Undoubtedly, a state may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the powers conferred by the Constitution upon Congress, or infringe rights granted or secured by that instrument. But it may not, under the guise of exerting its police power, or of enacting inspection laws, make discriminations against the products and industries of some of the states in favor of the products and industries of its own or of other states. The owner of the meats here in question, although they were from animals slaughtered in Illinois, had the right, under the Constitution, to compete in the markets of Virginia upon terms of equality with the owners of like meats, from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale. Any local regulation, which, in terms or by its necessary operation, denies this equality in the markets of a state, is, when applied to the people and pro-

ducts and industries of other states, a direct burden upon commerce among the states, and therefore void. *Welton v. Missouri*, 91 U. S. 275, 261, (23:347, 349); *Hannibal & St. J. R. Co. v. Husen*, 95 U. S. 465 (24:527); *Minnesota v. Barber* above cited. The fees enacted under the Virginia statute for the inspection of beef, veal and mutton, the product of animals slaughtered one hundred miles or more from the place of sale, are, in reality, a tax; and a 'discriminating tax imposed by a state operating to the disadvantage of the products of other states when introduced into the first-mentioned state, is, in effect, a regulation in restraint of commerce among the states, and, as such, is a usurpation of the powers conferred by the Constitution upon the Congress of the United States.' *Walling v. Michigan*, 116 U. S. 446, 455, (29:691, 694). Nor can this statute be brought into harmony with the Constitution by the circumstance that it purports to apply alike to the citizens of all the states, including Virginia; for, 'a burden imposed by a state upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the states, including the people of the state enacting such statute.' *Minnesota v. Barber, above* cited; *Robbins v. Shelby County Taxing District*, 120 U. S. 489, 497, (30: 694, 697). If the object of Virginia had been to obstruct the bringing into that state, for use as human food, of all beef, veal and mutton, however, wholesome, from animals slaughtered in distant states, that object will be accomplished if the statute before us be enforced."

In the case of *Voight v. Wright*, 141 U. S. 262, 35 L. ed. 638, the state of Virginia passed an act providing for the inspection of all flour brought into the state before it could be used. The court, following the Brimmer case, held the act unconstitutional, using the following language:

"It may be remarked in passing, that in the notes to *Turner v. Maryland*, 107 U. S. 38, 51, 53, (27: 370, 375, 376), prepared by Mr. Justice Blatchford, in which is contained a list of the various inspection laws of the different states, we do not observe any laws which seem to provide for the inspection of articles other than those which are the product of the state, and this generally with a view to preparaing them for exportation.

"But, be this as it may, and without attempting to lay down any specific proposition on this somewhat difficult subject, there is enough in the case before us to decide it on satisfactory grounds, without passing upon the general right of the state to inspect imports or the qualifications to which it must necessarily be subject. The law in question is a discriminating law, and requires the inspection of flour brought from other states, when such inspection is not required for flour manufactured in Virginia. This aspect of the case brings it directly within the principles of *Brimmer v. Rebman*, 138 U. S. 78 (34: 862), decided at the present term. The law in question in that case was another statute of Virginia, making it unlawful to sell within the state any fresh meats (beef, veal or mutton) slaughtered one hundred miles, or over, from the place at which it might be offered for sale, until it had been inspected and approved as provided in the act. Mr. Justice Harlan, delivering the opinion of the court in that case, said: 'Undoubtedly, a state may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the powers conferred by the Constitution upon Congress, or infringe rights granted or secured by that instrument. But it may not, under the guise of exerting its police powers, or of enacting inspection laws, make discrimination against the products and industries of some of the

states in favor of the products and industries of its own or of other states. The owner of the meats here in question, although they were from animals slaughtered in Illinois, had the right, under the Constitution, to compete in the markets of Virginia upon terms of equality with the owners of like meats, from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale. Any local regulation which in terms or by its necessary operation denies this equality in the markets of a state is, when applied to the people and products or industries of other states, a direct burden upon commerce among the states, and therefore, void. *Welton v. Missouri,* 91 U. S. 275, 281 (23: 347, 349); *Hannibal & St. J. R. Co. v. Husen,* 95 U. S. 465, (24: 527); *Minnesota v. Barber,* 136 U. S. 313, 319, 34: 455, 457).' "

In the case of *Brennon v. Titusville,* 153 U. S. 289, 38 L. ed: 719, the State of Pennsylvania passed an act imposing a license tax upon salesmen soliciting orders by sample for goods to be shipped from without the state. The court held that interstate commerce could not be directly burdened by the exercise of the police power, using the following language:

"Because a license may be required in the exercise of the police power, it does not follow that every license rests for its validity upon such police power. A state may legitimately make a license for the privilege of doing a business one means of taxation, and that such was the purpose of this ordinance is obvious, not merely from the fact that in the title it is declared to be for 'general revenue purposes,' but also from the further fact that, so far as we are informed by any questions from or reference to any part of the ordinance, there is no provision for any supervision, control or regulation of any business for which by the ordinance a license is required. In

other words, so far as this record discloses, this ordinance sought simply to make the various classes of business named therein pay a certain tax for the general revenue of the city. Even if it be that we are concluded by the opinion of the Supreme Court of the state that this ordinance was enacted in the exercise of the police power, we are still confronted with the difficult question as to how far an act held to be a police regulation, but which in fact affects interstate commerce can be sustained. It is undoubtedly true that there are many police regulations which do affect interstate commerce, but which have been and will be sustained as clearly within the power of the state; but we think it must be considered, in view of a long line of decisions, that it is settled that nothing which is a direct burden upon interstate commerce can be imposed by the state without the assent of congress, and that the silence of congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free."

In the case of *West v. Kansas Natural Gas Company*, 221 U. S. 229, 55 L. ed. 716, the court had under review a statute of the State of Oklahoma, which prohibited the transportation of natural gas out of the state. This court held that since gas was a subject of private ownership, the act placed a direct burden upon interstate commerce, using the following language:

"The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is in a sense commercial,—the business welfare of the state, as coal might, or timber. Both of those products may be limited in amount, and the same consideration of the public welfare which would confine

gas to the use of the inhabitants of a state would confine them to the inhabitants of the state. If the states have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one state has it, all states have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that 'in matters of foreign and interstate commerce there are no state lines.' In such commerce, instead of the states, a new power appears and a new welfare,—a welfare which transcends that of any state. But rather let us say it is constituted of the welfare of all the states, and that of each state is made the greater by a division of its resources, natural and created, with every other state, and those of every other state with it. This was the purpose, as it is the result, of the interstate commerce clause of the Constitution of the United States. If there is to be a turning backward, it must be done by the authority of another instrumentality than a court."

We direct your Honors' attention to the fact that the legislature of the State of Louisiana has expressly consented that shrimp and oysters may be the subject of intrastate commerce. It has not only consented that they and/or the by-products thereof may be subjects of intrastate commerce, but are expressly permitted to be come subjects of interstate commerce.

The question was re-examined in the case of *Pennsylvania v. West Virginia*, 262 U. S. 553, 67 L. ed. 1117. In that case an act of the State of West Virginia was under review, wherein the state of West Virginia as-

serted the necessity, for the use and benefit of its own citizens, that gas be kept within the state, and prohibited the exportation of gas except and only after local consummation had been supplied. This court held that gas was the subject of private ownership, and that the act necessarily burdened interstate commerce.

We respectfully submit that in this case, while the state of Louisiana may have had the right not to permit shrimp or oysters or the by-products thereof to pass into interstate commerce, but having so consented, in express terms, and the most unambiguous language, the foregoing rule is applicable.

We direct your Honors' attention to the fact that all cases dealing with the right of a state to conserve its natural resources, speak of the right as one in the exercise of the police power of the state. In other words, the right of a state to conserve its natural resources is simply the exercise of a police power, and this court has so denominated it.

In the case of *State of N. Y. v. Becker*, 241 U. S. 556, 60 L. ed. 1166; in the case of *LaCoste v. Dept. of Conservation*, 263 U. S. 545, 68 L. ed. 437; *Lawton v. Steele*, 152 U. S. 133, 38 L. ed. 385, and other cases therein referred to, the principles applicable to the exercise of the police power of the state are involved.

In the case of *Foote & Co. v. Stanley, Comptroller*, 232 U. S. 494, 58 L. ed. 698, Mr. Justice Lamar, speaking for the Supreme Court of the United States, held that a tax of one cent per bushel on oysters from other states, which was shown to be an amount in excess of that necessary to defray the expenses of actual inspection, was unlawful as interferring with interstate commerce. The purpose of the act, of course, was to protect Maryland oysters against the competition of oysters brought in from other states.

In the case of *Sanitary District of Chicago v. United States of America*, 266 U. S. 405, 69 L. ed. 352, the Supreme Court of the United States held that the authority of the United States to regulate interstate commerce is superior to that of the state to provide for the welfare or necessities of the inhabitants. In that case, the city of Chicago sought to take water and drain the same from Lake Michigan. The court used the following language:

> "As to its ultimate interest in the lakes, the reasons seem to be stronger than those that have established a similar standing for a state, as the interests of the nation are more important than those of any state. *Re Debs*, 148 U. S. 564, 584, 585, 599, 39 L. ed. 1092, 1102, 1103, 1107, 15 Sup. Ct. Rep. 900; *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 51 L. ed. 1038, 27 Sup. Ct. Rep. 618, 11 Ann. Cas. 488; *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 355, 52 L. ed. 828, 831, 28 Sup. Ct. Rep. 529, 14 Ann. Cas. 560; *Marshall Dental Mfg. Co. v. Iowa* 226 U. S. 460, 462, 57 L. ed. 300, 302, 33 Sup. Ct. Rep. 168.
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> "The main ground is the authority of the United States to remove obstructions to interstate and foreign commerce. There is no question that this power is superior to that of the states to provide for the welfare or necessities of their inhabitants. In matters where the states may act the action of Congress overrides what they have done. *Monongahelia Bridge Co. v. United States*, 216 U. S. 177, 54 L. ed. 435, 30 Sup. Ct. Rep. 356; Second Employers' Liability Cases, (*Mondou v. New York N. H. & H. R. Co.*), 223 U. S. 1, 56 L. ed. 327, 347, 38 L. R. A. (NS) 44, 32 Sup. Ct. Rep. 167, 1 N. C. C. A. 875. But in matters where the national importance is imminent and direct, even where Congress has been silent, the states may not act at all. *Kansas City Southern R. Co. v. Kaw Valley Drain-*

age Dist., 233 U. S. 75, 58 L. ed. 857, 859, 34 Sup. Ct. Rep. 564. Evidence is sufficient, if evidence is necessary, to show that a withdrawal of water on the scale directed by the statute of Illinois threatens and will affect the level of the lakes, and that it is a matter which can not be done without the consent of the United States even were there no international covenant in the case."

Again in the case of *Real Silk Hoisery Mills v. City of Portland*, 268 U. S. 325, 69 L. ed. 982, in order to prevent frauds on its citizens the city of Portland passed an act requiring local agents taking orders by sample to make application, to pay a license and give bond. The object of the act was claimed to be in aid of the police power of the state to protect its citizens against fraud. The real purpose of the act was to protect the citizens of the city against competition in interstate commerce. The court held that the enforcement of the act should be enjoined, using the following language:

"By a bill filed in the United States District Court for Oregon appellant challenged the ordinance and asked that its enforcement be restrained upon the ground, among others, that it interferes with and burdens interstate commerce and is repugnant to Article 1, Sec. 8, Federal Constitution. The trial court upheld the enactment and sustained a motion to dismiss the bill. This was affirmed by the circuit court of appeals, 297 Fed. 897.

"Considering former opinions of this court, we can not doubt that the ordinance materially burdens interstate commerce and conflicts with the commerce clause. *Robbins v. Taxing District*, 120 U. S. 489, 497, 30 L. ed. 694, 697, 1 Inters. Com. Rep. 45, 7 Sup. Ct. Rep. 592; *Brennan v. Titusville*, 153 U. S. 289, 38 L. ed. 719, 4 Inters. Com. Rep. 658, 14 Sup. Court Rep. 829; *Rearick v. Pennsylvania*,

203 U. S. 507, 51 L. ed. 295, 27 Sup. Ct. Rep. 159; *Crenshaw v. Arkansas*, 227 U. S. 389, 57 L. ed. 565, 33 Sup. Ct. Rep. 294; *Texas Transport & Terminal Co. v. New Orleans*, 264 U. S. 150, 68 L. ed. 611, 34 A. L. R. 907, 44 Sup. Ct. Rep. 242; *Alpha Portland Cement Co. v. Mass.*, 268 U. S. 203, ante, 916, 45 Sup. Ct. Rep. 477 (May 4, 1925).

" 'The negotiation of sales of goods which are in another state for the purpose of introducing them in the state in which the negotiation is made, is interstate commerce.' Manifestly no license fee could have been required of appellant's solicitors if they had traveled at its expense and received their compensation by direct remittance from it. And we are unable to see that the burden on interstate commerce is different or less because they are paid through retention of advance partial payments made under definite contracts negotiated by them. Nor can we accept the theory that an expressed purpose to prevent possible frauds is enough to justify legislation which really interferes with the free flow of legitimate interstate commerce. See *Shafer v. Farmers Grain Co.* 268 U. S. 189, ante, 909, 45 Sup. Ct. Rep. 481, (May 4, 1925).

In the case of *Minnesota v. Barber*, 136 U. S. 313, 34 L. ed. 455, it is held that a Minnesota statute which requires that fresh beef, veal and mutton intended to be offered for sale as human food shall not be sold in the State of Minnesota unless the animals from which such meats are taken shall have been inspected in Minnesota before being slaughtered is a direct interference with interstate commerce and void. The court used the following language (p. 459):

"When to this is added the fact that the statute, by its necessary operation, prohibits the sale, in the state, of fresh beef, veal, mutton, lamb or pork

from animals that may have been inspected carefully and thoroughly in the state where they were slaughtered, and before they were slaughtered, no doubt can remain as to its effect upon commerce among the several states. It will not do to say—certainly, no judicial tribunal can, with propriety, assume—that the people of Minnesota may not, with due regard to their health, rely upon inspection in other states of animals there slaughtered for purposes of human food. If the object of the statute had been to deny altogether to the citizens of other states the privilege of selling, within the limits of Minnesota, for human food, any fresh beef, veal, mutton, lamb or pork, from animals slaughtered outside of that state, and to compel the people of Minnesota, wishing to buy such meats, either to purchase those taken from animals inspected and slaughtered in the state, or to incur the cost of purchasing them, when desired for their own domestic use, at points beyond the state, that object is obtained by the act in question. Our duty to maintain the Constitution will not permit us to shut our eyes to these obvious and necessary results of the Minnesota statute. If this legislation does not make such discrimination against the products and business of other states in favor of the products and business of Minnesota, as interferes with and burdens commerce among the several states, it would be difficult to enact legislation that would have that result."

The court also used the following language, p. 460:

"It is, however, contended, in behalf of the state, that there is in fact no interference, by this statute, with the bringing of cattle, sheep and swine into Minnesota from other states, nor any discrimination against the products or business of other states, for the reason—such is the argument—that the statute requiring an inspection of animals on the hoof,

as a condition of the privilege of selling, or offering for sale, in the state, the meats taken from them, is applicable alike to all owners of such animals, whether citizens of Minnesota or citizens of other states. To this we answer that a statute may upon its face, apply equally to the people of all the states, and yet be a regulation of interstate commerce which a state may not establish. A burden imposed by a state upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the states, including the people of the state enacting such statute. *Robbins v. Shelby County Taxing District,* 120 U. S. 489, 497, (30: 694, 697); *State Freight Tax Case,* 82 U. S. 15 Wall. 232, (21: 146). The people of Minnesota have as much right to protection against the enactments of that state, interfering with the freedom of commerce among the states, as have the people of other states. Although this statute is not avowedly, or in terms, directed against the bringing into Minnesota of the products of other states, its necessary effect is to burden or obstruct commerce with other states, as involved in the transportation into that state, for purposes of sale there, of all fresh beef, veal or mutton, lamb or pork, however free from disease may have been the animals from which it was taken."

The identical question was presented in the case of *Lochner v. State of New York,* 198 U. S. 45, 49 L. ed. 937. In that case, the constitutionality of a labor law of New York forbidding adults from working in bakeries for more than a certain number of hours daily was sought to be justified on the ground that it was the exercise of the police power of the state. The Supreme Court of the United States used the following language in holding that the Act violated the Fourteenth Amendment to the Constitution of the United States, and had no reference to any legitimate exercise of the police power of the State of New York.

"It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so, when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of a statute must be determined from the natural and legal effect of the language employed, and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statute when put into operation, and not from their proclaimed purpose. *Minnesota v. Barber*, 136 U. S. 313, 34 L. ed. 455; *Brimmer v. Rebman*, 138 U. S. 78, 34 L. ed. 862. The court looks beyond the mere letter of the law in such cases. *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064."

The case of *William Adair v. United States*, 208 U. S. 161, 52 L. ed. 436, is directly in point. In that case there was presented for review an act of Congress forbidding an interstate railroad company from discharging an employee because he was a member of a labor union. This congressional enactment was sought to be justified on the ground that Congress had the right to regulate interstate commerce. The court held that the act violated the Fifth Amendment to the Constitution of the United States; that while the act purported to regulate interstate commerce, as a matter of fact, it had no relation thereto; that under the guise of regulating interstate commerce the right of contract was interfered with. The court used the following language:

"Looking alone at the words of the statute, for the purpose of ascertaining its scope and effect, and determining its validity, we hold that there is no such connection between interstate commerce and

membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress, it is difficult to perceive why it might not by absolute regulation require interstate commerce under penalties to employ, in the conduct of its interstate business, only members of labor organizations, or only those who are not members of such organizations, which could not be recognized as existing under the Constitution of the United States. No such rule of criminal liability as that to which we have referred can be regarded as, in any just sense, a regulation of interstate commerce. We need scarcely repeat what this court has more than once said that the power to regulate interstate commerce, great and paramount as that power is, can not be exerted in violation of any fundamental right secured by other provisions of the Constitution. *Gibbons v. Ogden,* 9 Wheatley, 196, 6 L. ed. 23, 70; *Lottery Case,* 188 U. S. 321, 47 L. ed. 492, 23 Sup. Ct. Rep. 321."

The case of *W. C. Hammer, United States Attorney v. Dagenhart,* 247 U. S. 251, 62 L. ed. 1101, presenting a very interesting question. Under the guise of regulating interstate commerce, Congress passed an act prohibiting the employment of minors in factories for more than a certain number of hours daily, and providing that no goods manufactured should be shipped in interstate commerce where the act was violated. The act was passed and sought to be maintained as one regulating interstate commerce. The Supreme Court of the United States held, however that the act had no such relation to interstate commerce as justified its passage, using the following language:

"In interpreting the Constitution, it must never be forgotten that the nation is made up of states, to which are intrusted the powers of local govern-

ment, and to them and to the people, the powers not expressly delegated to the national government are reserved. *Lane County v. Oregon,* 7 Wall. 71, 19 L. ed. 101. The power of the states to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent, and has never been surrendered to the general government. *New York v. Miln,* 11 Peters 102, 139, 9 L. ed. 648, 662; *Slaughter-House Cases,* 16 Wall 36, 63, 21 L. ed. 394, 404; *Kidd v. Pearson,* supra. To sustain this statute would not be, in our judgment, a recognition of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the Federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the states.

"We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations, and not by an invasion of the powers of the states. This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously with the other, the duties intrusted to it by the constitution.

"In our view, the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of children in factories and mines within the state,—a purely state authority. Thus, the act in a two-fold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce,

but also exerts a power as to a purely local matter to which the Federal authority does not extend. The far-reaching result of upholding the act can not be more plainly indicated than by pointing out that if Congress can thus regulate matters intrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the states over local matters may be eliminated, and thus our system of government be practically destroyed.

"For these reasons, we hold that this law exceeds the constitutional authority of Congress. It follows that the decree of the District Court must be affirmed."

Schollenberger v. Pennsylvania, 171 U. S. 1, 43 L. ed. 49, is what is known as the Oleomargarine case. In that case it appeared that the state of Pennsylvania had an act which prohibited the importation into the state of Oleomargarine. The latter named commodity was an imitation of butter. It was harmless if manufactured pure, but might become harmful if not properly manufactured. On account of the difficulty of detecting impurity, the legislature of the state of Pennsylvania, for the professed purpose of protecting the health of its citizens, but for the actual and concealed purpose of protecting dairy interests, excluded oleomargarine from importation and sale into the state altogether. The Supreme Court of the United Staates held that the act was one regulating interstate commerce, using the following language:

"There is contained in the 17th volume of the Encyclopaedia Britannica an extract from a report by the secretary of the British ambassy at Washington, in 1880, describing the method of obtaining oleomargarine oil. This shows the article was then well known.

"In *Ex Parte Scott* and others the circuit court for the eastern district of Virginia (66 Fed. Rep. 45), speaking by Hughes, district judge, said: 'It is a fact of common knowledge that oleomargarine has been subjected to the severest scientific scrutiny, and has been adopted by every leading government in Europe as well as America, for use by their armies and navies. Though not originally invented by us, it is a gift of American enterprise and progressive invention to the world. It has become one of the conspicuous articles of interstate commerce and furnishes a large income to the general government annually. * * * * It is entering rapidly into domestic use and the trade in oleomargarine has become large and important. The attention of the national government has been attracted to it as a source of revenue. * * * Provincial prejudice against this now staple article of commerce is natural, but a city of the size and prospects of Norfolk as a world's entreport ought not to be foremost in manifesting such a prejudice.'

"In *People v. Marx,* 99 N. Y. 377 (52 Am. Rep. 34), which was a prosecution under the New York statute (chap. 202, Laws of 1884) prohibiting the manufacture or sale of oleomargarine, the court of appeals of New York held the act unconstitutional. It appears from the opinion that on the trial of that action on the part of the defendant 'it was proved by distinguished chemists that oleomargarine was composed of the same elements as dairy butter. That the only difference between them was that it contained a smaller proportion of fatty substance known as butterine. That this butterine exists in dairy butter only in a small proportion—from three to six per cent. That it exists in no other substance than butter made from milk and it is introduced into oleomargarine butter by adding to oleomargarine stock some milk, cream, or butter and churn-

ing, and when this is done it has all the elements of natural butter, but there must always be a smaller percentage of butterine in the manufactured product than in the butter made from milk. The only effect of the butterine is to give flavor to the butter, having nothing to do with its wholesomeness. That the oleoginous substances in the oleomargarine are substantially identical with those produced from milk or cream. Professor Chandler testified that the only difference between the two articles was that dairy butter had more butterine. That oleomargarine contained not over 1 per cent of that substance, while dairy butter might contain four or five per cent, and that if four or five per cent of butterine was added to the oleomargarine, there would be no difference; it would be butter; irrespective of the sources, they would be the same substance. According to the testimony of Professor Morton, whose statement was not controverted or questioned oleomargarine, so far from being an article devised for purposes of deception in trade, was devised in 1872 or 1873 by an eminent French scientist who has been employed by the French government to devise a substitute for butter.' This extract from the opinion in the New York case, speaking of the testimony given before the trial judge, is not quoted for the purpose of proving the facts therein stated, but for the purpose of showing that as long as the time when that case was decided—June, 1885— the article was then well known as an article of food, and manufactured as a substitute for butter, and we may notice from some of the histories of the article the fact (which is stated in the opinion) that it was first devised as long ago as 1872 or 1873 by a French gentleman who had been employed by the French government to devise a substitute for butter. The article is a subject of export, and is largely used in

foreign countries. Upon all these facts we think it apparent that oleomargarine has become a proper subject of commerce among the states and with foreign nations.

"The general rule to be deduced from the decisions of this court is that a lawful article of commerce cannot be wholly excluded from importation into a state from another state where it was manufactured or grown. A state has power to regulate the introduction of any article, including a food product, so as to insure purity of the article imported, but such police power does not include the total exclusion even of an article of food.

"In *Minnesota v. Barber*, 136 U. S. 313 (34: 455, 3 Inters. Com. Rep. 185), it was held that an inspection law relating to an article of food was not a rightful exercise of the police power of the state if the inspection prescribed were of such a character or if it were burdened with such conditions as would wholly prevent the introduction of the sound article from other states. This was held in relation to the slaughter of animals whose meat was to be sold as food in the state passing the so-called inspection law. The principle was affirmed in *Brimmer v. Rebman*, 138 U. S. 78, (34: 862), (3 Inters. Com. Rep. 485), and in *Scott v. Donald*, 165 U. S. 58, 97, (41: 632, 644).

"Is the rule altered in a case where the inspection or analysis of the article to be imported is somewhat difficult and burdensome? Can the pure and healthy food product be totally excluded on that account? No case has gone to that extent in this court. The nearest approach to it was the case of *Pierce v. New Hampshire*, 46 U. S. 5 How. 504 (12: 256), involving the importation of intoxicating liquors. But in *Leisy v. Harden*, 135 U. S. (34: 128,

3 Inters. Com. Rep. 36), the New Hampshire case was overruled, and it was stated by the present Chief Justice, in speaking for the court, that 'whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we cannot hold that any article which Congress recognizes as subjects of interstate commerce are not such, or that whatever are thus recognized can be controlled by state laws amounting to regulations, while they retain that character; although, at the same time, if directly dangerous in themselves the state may take appropriate measures to guard against injury before it obtains complete jurisdiction over them. To concede to a state the power to exclude, directly or indirectly, articles so situated, without congressional permission, is to concede to a majority of the people of a state, represented in the state legislature, the power to regulate commercial intercourse between the states, by determining what shall be its subjects, when that power was distinctly granted to be exercised by the people of the United States, represented in Congress, and its possession by the latter was considered essential to that more perfect union which the Constitution was adopted to create.' "

There are many cases other than those above cited holding that a state cannot impose a tax upon persons who act as agents for the owners of property without the state, which agents make sales by samples within the state. *Stockard v. Morgan*, 185 U. S. 27, 46 L. ed. 785; *Asher v. Texas*, 128 U. S. 129, 32 L. ed. 586.

In the case of *R. R. Co. v. Mays*, 201 U. S. 321, 50 L. ed. 772, it appeared that in the attempted exercise of its police power the legislature of Texas passed an act requiring a railroad company to furnish cars for a shipper at any designated point on demand, in writing. The act was intended to aid growers and shippers of

cattle in order that shipping facilities would be promptly furnished, the legislature of Texas claiming the right to foster the cattle-raising business by requiring prompt movements. The Supreme Court of the United States held in the above case that the act was a burden upon interstate commerce.

In the case of *Central R. R. v. Murphy*, 196 U. S. 194, 49 L. ed. 444, in order to enable its citizens to collect promptly a claim against a railroad company for damage or delays in freight, the duty of collecting information in respect to the handling of the freight on the part of connecting carriers was imposed on the delivering carrier. The act was passed for the purpose of protecting citizens of the states in the collection of just demands, and was claimed to be in the exercise of the legitimate police power of the state. The Supreme Court of the United States held that the act was one affecting interstate commerce and void.

In the case of *Atlantic Coast Line v. Wharton*, 207 U. S. 328, 52 L. ed. 230, it appeared that the state legislature claiming to be acting in the interest of its people for their health, safety and well-being, passed an act requiring all passenger trains to stop interstate through trains at certain designated stations in the state. The Supreme Court of the United States held that the act was void as imposing a burden on interstate commerce.

In the case of *Southern R. R. Co. v. King*, 217 U. S. 524, 54 L. ed. 868, it was held, however, that a state could validly regulate the operation of railroad trains engaged in interstate commerce, and provide their speed through municipalities where the same did not directly interfere with interstate commerce.

In the case of *South Covington R. R. v. Covington*, 235 U. S. 537, 55 L. ed. 350, L. R. A. 1915 F 792, the State of Kentucky passed an act requiring interstate

street cars carrying passengers in the winter time to provide that the temperature should not drop below 50 degrees. The state claimed in the passage of the act to be acting in the exercise of its police power for the health and well-being of its citizens. The Supreme Court of the United States held that the act was a direct interference with interstate commerce and void.

In the case of *Missouri Pacific R. R. v. North Dakota*, 236 U. S. 585, 39 L. ed. 735, L. R. A. 1917F. 1146, the legislature of the state of North Dakota, in order to encourage and build up local industries, establishes a very low rate for carrying intrastate freight. The state claimed to be acting for the well-being of its citizens in the exercise of its police power. The Supreme Court of the United States held that the act was void.

In the case of *Seaboard Air Line v. Blackwell*, 244 U. S. 310, 61 L. ed. 1160, L. R. A. 1917 F. 1184, the legislature of the state of Georgia passed an act intended to promote the safety and well-being of its citizens, that an engineer of a train of cars should so control his train as to be able to stop at all crossings and that he should begin to check his train 400 yards from the crossing. The Supreme Court of the United States held the act a direct interference with interstate commerce and void.

In the case of *Pittsburgh Coal Co. v. Bates*, 156 U. S. 577, it was held that no state has the power to make any law or regulation which will affect free and unrestrained intercourse and trade between the states.

An act of the state legislature in the exercise of its police power, however, is not void as an interference with interstate commerce where such commerce is only indirectly affected.

A typical case is that of *Austin v. State of Tennessee*, 179 U. S. 343, 45 L. ed. 124. In that case it appeared that the legislature of the state of Tennessee prohibiting

the sale within the state of cigarettes was a valid exercise of the police power of the state in the protection of the health, morals and well-being of its citizens. The court used the following language:

> "We have had repeated occasion to hold, where state legislation has been attacked as violative either of the power of Congress over interstate commerce, or of the 14th Amendment of the Constitution, that, if the action of the state legislature were as a bona fide exercise of the police power, and dictated by a genuine regard for the preservation of the public health or safety, such legislation would be respected, though it might interfere, indirectly with interstate commerce. While, as was said, in *Holden v. Hardy*, 169 U. S. 366, 392, 42 L. ed. 780, 791, 18 Sup. Ct. Rep. 383, 'the police power connot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the statement of public nuisances, and a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. Thus while in *Hannibal & St. J. R. Co. v. Husen*, 95 U. S. 465, 24 L. ed. 527, it was held that a statute of Missouri, prohibiting the driving or bringing of any Texas, Mexican, or Indian cattle into the state, was in conflict with the interstate commerce clause of the Constitution, it was subsequently held that the introduction of diseased cattle might be prohibited altogether, or subjected to such regulations as the legislature might choose to impose. *Missouri K. & T. R. Co. v. Haver*, 169 U. S. 613, 42 L. ed. 878, 18 Sup. Ct. Rep. 488. So, too, although it was held in *Barber v. Connolly*, 113 U. S. 27, 28 L. ed. 923, 5 Sup. Ct. Rep. 357, and in *Soon Hing v. Crowley*, 113 U. S. 703 28 L. ed. 1145, 5 Sup. Ct. Rep. 730, that a municipal ordinance prohib-

iting laundry work within certain territorial limits and within certain hours was purely a police regulation, such an ordinance was void, if it conferred upon the municipal authorities arbitrary power at their own will and without regard to discretion in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying, or the propriety of the places selected for carrying on business. *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064. In delivering the opinion Mr. Justice Matthews observed: 'Though the law itself be fair and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an equal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.''

In other words, the state could interfere with the sale of the cigarettes after they came into and were part of the property of the state, but could not interfere with the importation of the cigarettes into the state. It is, of course, perfectly apparent, however, that manufacture with intent to sell in interstate commerce is not interstate commerce. *U. S. v. E. C. Knight Co.*, 165 U. S. 1, 39, L. ed. 325.

Whenever the state police power and the regulation of interstate commerce come into conflict, the police power must yield. *Arkansas v. Coal Co.*, 183 U. S. 185, 46 L. ed. 144.

In the case of *Mississippi Railroad Commission v. Ill. Cent.* 203 U. S. 333, 51 L. ed. 209, the supreme court of the United States held that interstate commerce was unconstitutionally interfered with by an order of the

Mississippi Railroad Commission requiring the railway company to stop its interstate mail trains at a specified county seat.

In the case of *Collins v. New Hampshire*, 171 U. S. 30, 43 L. ed. 60, the supreme court of the United States held an act of the state of New Hampshire invalid which provided that oleomargarine should not be sold as substitute for butter unless it was a pink color. The state of New Hampshire asserted the right to pass an act in order to protect the health and well-being of its citizens. The court held that the act was a direct burden upon interstate commerce and was invalid. Doubtless the purpose of the act was to protect local producers of butter in the state from competition of foreign states.

In the case of *Hannibal R. R. Co. v. Husen*, 95 U. S. 465, 24 L. ed. 527, it appeared that the state of Missouri in that case passed an act claiming to act in the exercise of its police power, preventing the driving or conveying of Texas, Mexican or Indian cattle into or through the state between the first day of March and the first day of December. It was contended by the state that resident cattle were liable to disease from such cattle during these months. The supreme court of the United States held the act unconstitutional, using the following language:

> "It seems hardly necessary to argue at length, that, unless the statute can be justified as a legitimate exercise of the police power of the state, it is a usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate commerce; a regulation extending to prohibition. Whatever may be the power of a state over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution of the United States, to Congress, in the same words in which it is given over the

other, and in both cases it is necessarily exclusive. That the transportation of property from one state to another is a branch of interstate commerce is undeniable, and no attempt has been made in this case to deny it.

"The Missouri Statute is a plain interference with such transportation; an attempted exercise over it of the highest possible power—that of destruction. It meets at the borders of the state a large and common subject of commerce, and prohibits its crossing the state line during two thirds of each year, with a proviso, however, that such cattle may come across the line loaded upon a railroad car or steamboat, and pass through the state without being unloaded. But even the right of steamboat owners and railroad companies, to transport such property through the state, is loaded by the law with onerous liabilities, because of their agency in the transportation. The object and effect of the statute are, therefore, to obstruct interstate commerce, and to discriminate between the property of citizens of other states. This court has heretofore said that interstate transportation of passengers is beyond the reach of a State Legislature. And if, as we have held, state taxation of persons passing from one state to another, or a state tax upon interstate transportation of passengers, is prohibited by the Constitution, because a burden upon it, a fortiori, if possible, is a state tax upon the carriage of merchandise from state to state. Transportation is essential to commerce, or rather it is commerce itself; and every obstacle to it, or burden laid upon it by legislative authority, is regulation. Case of *State Freight Tax*, 15 Wall., 232, 21 L. ed. 146; *Ward v. Maryland*, 12 Wall., 418, 20 L. ed. 449; *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Henderson v. Mayor of N. Y.* 92 U. S. 259, 23 L. ed. 657; *Chy Lung v. Freeman*,

92 U. S. 275, 23 L. ed. 550. The two latter of these cases refer to obstructions against the admission of persons into a State, but the principles asserted are equally applicable to all subjects of commerce.

"We are thus brought to the question whether the Missouri Statute is a lawful exercise of the police power of the state. We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the states was not a surrender of that which may properly be denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health and safety. As was said in *Thorpe v. R. R. Co.* 27 Vt. 149, 'It extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state. According to the maxim, *Sic utero tuo ut aliunum non laedas,* which, being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may use his own and not to injure others.' It was further said, that, by the general police power of a state, 'persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged principles ever can be made, so far as natural persons are concerned.' It may also be admitted that the police powers of a state justify the adoption of precautionary measures against social evils. Under it, a state may legislate to prevent the spread of crime or pauperism or disturbances of the peace. It may exclude from its limits, convicts, paupers, idiots and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious dis-

eases; a right founded, as intimated, in *The Passenger Cases,* 7 How. 283, by Grier, J., in the sacred law of self-defense. Vide, *Neff v. Penoyer,* 2 Sawyer, 283.

We propose now to take the facts in this case and show the court that these acts were passed solely and only for the purpose of regulating the place where the respective commodities should be manufactured, and in so doing a direct burden is placed upon interstate commerce, which is prohibited.

In *Weaver v. Palmer,* 270 U. S. 402, 70 L. ed. 654, your Honors held that in determining as to whether or not an act is unconstitutional, as applied to constitutional guaranties, you would look to all the facts, those which were proven, and those of which the court took judicial notice. In that case the court used the following language:

> "The question for decision is whether the provision purporting absolutely to forbid the use of shoddy in comfortables violates the due process clause or the equal protection clause. The answer depends on the facts of the case. Legislative determinations express or implied are entitled to great weight; but it is always open to interested parties to show that the legislature has transgressed the limits of its power. *Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, 413, 67 L. ed. 322, 325, 28 A. L. R. 1321, 43 Sup. Ct. Rep. 158. Invalidity may be shown by things which will be judicially noticed. (*Quong Wing v. Kirkendall*), 223 U. S. 59, 64, 56 L. ed. 350, 352, 32 Sup. Ct. Rep. 192), or by facts established by evidence. The burden is on the attacking party to establish the invalidating facts. See *Minnesota Rate Cases* (*Simpson v. Shepard*) 230 U. S. 352, 452, 57 L. ed. 1511, 1563, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18."

See also directly in point, *United States v. Katz* 271 U. S. 354, 70 L. ed. 986.

The proven facts show that the packing of shrimp at Biloxi, Mississippi, commenced fifty years ago from a small beginning; that the industries were undertaken by Louisiana citizens who came to Biloxi, Mississippi, on account of the favorable surroundings therefor; that the descendants of the originators of these industries are still in business in Biloxi; that they have taken these commodities, which were of small value, and by their thrift and industry and efficiency, have built up a world market in each of these commodities; that in 1910 the oyster industry had increased to such an extent as that the Louisiana legislature looked with envious eyes upon the industry and sought to remove the same to its own shores by the act of 1910, to which we have referred your Honors, which act was stricken down. At that time the shrimp industry was so insignificant as that the legislature of the state of Louisiana paid no attention to it. As time progresses, both the shrimp and the oyster industry increases. The state of Louisiana then determines to obtain these industries for its own territory. It is perfectly apparent that it not only wanted the industries in order to afford subjects of taxation, employment for its unemployed, to give value to its lands, but it is perfectly apparent from the record that these thrifty, energetic people at Biloxi, as the business passed from father to son, had developed a system which was both efficient and economical, and the state of Louisiana determined not only that it would obtain these industries but that the packers from the coast, who had so well managed the industries, would be required, in order to obtain the supply of raw material, to move to Louisiana territory.

The following facts in cause No. 768 were proved and not denied. R. H. Chinn in affidavit (Tr. 101) at page 102 states that when the legislation was being discussed before the Louisiana legislature, the attorney for

the proponents of the bill publicly and openly stated that the purpose of the legislation was to compel shrimp caught in Louisiana to be manufactured therein. The affidavit contains the following language:

> "Affiant further states of his own knowledge that he was present at a meeting of a committee of the Senate and the Legislature of the State of Louisiana where the so-called shrimp act was being discussed, the same having been referred to said committee by the State Legislature, and at said meeting the Hon. John Dymond one of the attorneys representing the interest seeking such legislation, was questioned as to the value of shrimp hulls as a fertilizer and stated that the purpose of this act was not to conserve said shrimp hulls but that they were included in the act only for the purpose of compelling all the shrimp caught in Louisiana to be manufactured in Louisiana." (Tr. 102).

The gentleman referred to, Hon. John Dymond, is one of the distinguished counsel in this case, who has shown ability in securing the passage of the acts in question, as well as in sustaining the acts up to this date. Defendants in error introduced an affidavit of Mr. Dymond (Tr. 118), in which the following language appears: (Tr. 121).

> "I know that there are a number of sites, both in the Parishes of Plaquemines and St. Bernard, readily available for the erection of additional shrimp canneries, in the event that any of the Mississippi canneries desire to come into Louisiana. I know that several canneries have already come into the State of Louisiana and established factories here and are operating, who formerly operated in Mississippi. I know that the canneries of Louisiana are amply able to handle the products of the waters of the State of Louisiana of a sea food character for canning and packing."

Defendants in error likewise introduced the affidavit of Mr. Chas. Greiner (Tr. 124) Record No. 768, which affidavit contains the following language (Tr. 126):

"I have been engaged in the canning business for the past nineteen years, fifteen years in Louisiana, and I am thoroughly familiar with the shrimp canning industry in Louisiana and with those who are engaged therein and the plants engaged in that industry and also available locations for additional plants in Louisiana. There are a number of available sites in Louisiana for shrimp canning plants which have not yet been occupied by canning factories. The capacity of the canneries of Louisiana is adequate to take care of all of the shrimp that may be caught in Louisiana waters and certainly if the available sites are used by any new canning industries coming into Louisiana they can adequately take care of all shrimp caught within Louisiana waters. I am familiar with the condition of the waters east of the Mississippi River in the Parishes of St. Bernard and Plaquemines, State of Louisiana, and I note that the majority of the shrimp taken by the Mississippi canners for packing in Mississippi have been taken by them from the waters of St. Bernard and Plaquemines Parishes in Louisiana, and south of the boundary lines established by the Supreme Court of the United States in the suit of *State of Louisiana v. State of Mississippi.*

"The parishes of counties of St. Bernard and Plaquemines are possessed of vast natural resources in the waters of these two parishes, but these two parishes have heretofore not been given the advantage of the utilization of the products of their waters because the same have been taken into the State of Mississippi and the industry of manufacturing these natural products into articles of commerce carried on into the State of Mississippi not-

withstanding the fact that there are many suitable sites for canning factories in the St. Bernard and Plaquemines Parishes presently unoccupied and where adequate labor might be secured and properly housed and cared for."

Mr. Grenier was one of the proponents of these measures, and was very influential in securing the passage thereof.

Likewise the affidavit of James V. Dunbar was introduced by defendants in error in cause No. 768 (Tr. 128). The affidavit contains the following language (Tr. 130):

"We have a market for all of our shrimp bran, as we have a contract with the Marine Fertilizer and Feed Company for a period of five years with an optional renewal of five years not only to handle our entire product but any raw material that we may acquire from others and dried in any of our plants. We also have received frequent inquiries from other sources for this product especially from New York and from Germany.

"I have been connected with the canning and packing industry for thirty-five years and I am thoroughly familiar with the industry both in the State of Mississippi and in the State of Louisiana.

"I am familiar with the territory in the State of Louisiana adjacent to the waters of the Parishes of St. Bernard and Plaquemines in the State of Louisiana, and I know that there are many sites that may be acquired for shrimp packing and canning factories which are as yet unoccupied. I am confident that the canning factories of Louisiana, those now in existence and those that might be erect-

ed at these desirable points can adequately care for all of the shrimp that Louisiana waters may produce.

"The waters of the Parishes (or counties) of St. Bernard and Plaquemines are great sources of sea food supply. Heretofore this raw material fished from the waters of St. Bernard and Plaquemines Parishes has been taken into the State of Mississippi and the industry carried on in the State of Mississippi of canning and packing these sea food products and converting them into commercial commodities to the advantage of the State of Louisiana."

In case No. 769 the defendant introduced the affidavit of James McConnell (Tr. 87). Mr. McConnell, one of the officers of the Conservation Department, in his affidavit, concedes that the purpose of the passage of the law was to bring factories to Louisiana. The following quotation is from the affidavit introduced by defendants in error (Cause No. 769—page 88):

"The provisions of this law, which was adopted in the legislative session of 1926, these provisions applying to the prohibition of the exportation of oysters in the shell from Louisiana, did not go into effect until January 1, 1928, this being done to give the oyster canning factories in Mississippi an opportunity to acquire sites and build their factories in Louisiana.

"A similar provision in the shrimp law of Louisiana brought several of the shrimp canning factories into Louisiana where they might enjoy the natural resources from the waters of Louisiana.

"There are many sites in Louisiana that would be suitable for the erection of oyster canning factories in this state. Dunbar-Dukate Company has

bought a site at Slidell, Louisiana, to which he intends to move his Biloxi, Mississippi, canning factory as soon as this Louisiana law governing oysters is enforced."

So much for the proof. Now let us turn to the acts themselves. It must be borne in mind that in the meantime both shrimp and oysters have become mere commodities of interstate commerce.

In the New International Encyclopaedia, Vol. 17, p 669, the following statement is made concerning the oyster industry in the United States:

"The greatest production is in Chesapeake Bay, where the principal yield is from the natural beds. Most of the oysters from New England and from New York and the outer coast of New Jersey are produced by planted beds; the entire yield of the Pacific Coast is similarly derived, and there has been recently a considerable increase in oyster culture in New Jersey, Virginia, and other states. The number of persons engaged in the industry is estimated at upward of 60,000, but as many of them are employed part of the year in other fisheries, farming, etc., definite statistics are not available. Baltimore is the most extensive market and New York has a considerable export trade with Europe. Chesapeake Bay supplies more of the oysters of the United States than any other distinctly marked area, Long Island Sound ranking next in the output. The census reports show the total oyster product of the United States at 22,195,000 bushels in 1880, 22,284,000 bushels in 1889, 26,910,000 in 1897, and 33,330,000 in 1908. Of the 1908 product 16,983,000 bushels, or practically one-half of the total, are accredited to the Middle Atlantic States, 5,332,600 to the New England States, 4,364,000 to the South Atlantic States, 6,343,000 to the South Gulf States, and 309,-

000 to the Pacific Coast. The Middle Atlantic States, however, show a less total 1908 than in 1897, while New England in the South Atlantic, and the Gulf group show in each case an increase of more than 100 per cent in the same period. In 1880 the Middle Atlantic States supplied 94 per cent of the output of the United States, but in 1908 only 51 per cent. The total value of the oyster product in the United States in 1908 was $15,713,000, forming 29 per cent of the value of all fishery products of that year. The value of the oyster product of the Middle Atlantic States in 1908 was $8,842,000 against $10,288,000 in 1900, while that of the other sections doubled in the same time. The gain of the other sections when compared with the Middle Atlantic section, was apparently due in large part to the fact that a large share of the product of the area of increase was from cultivated beds, while most of the Middle Atlantic product was from public beds. No complete census of the oyster industry has been taken since 1908. A report on Maryland and Virginia in 1912, by the Bureau of Fisheries, puts the products of those States at 11,716,000 bushels, and that of the South Atlantic at 1,701,000 bushels."

In Nelson's Perpetual Loose Leaf Encyclopaedia, Vol. IX, page 136, the following language is used:

"The oyster crop of the North Atlantic greatly exceeds that of all other oyster fisheries combined, amounting to 37,000,000 out of a world total of 42,000,000 bushels for the season 1911-12. The largest known oyster ground in the world is Chesapeake Bay, with Long Island Sound second. The yield of the former in 1911-12 was 6,000,000 bushels from the Virginia shore, and 5,500,000 bushels from the Maryland shore. Of the Long Island Sound Fisheries, Connecticut stood first, with a yield of 4,000,000 bushels, and New York (Long Island) second,

with 3,250,000 bushels. The Sound oysters, however, bring double the market price of those from Chesapeake Bay. About 6,000,000 bushels are harvested annually in the Gulf of Mexico, the Louisiana fisheries leading. The harvest on the Pacific Coast reaches about 350,000 bushels."

Turning to the Shrimp Act; Section 4 of this act permits residents of the state of Louisiana and corporations, operating drying plants, operating factories or drying plants within the state, to catch shrimp during the open season without limit or restriction as to the quantity to be caught. There are regulations as to the dates during which they may not be taken (Sec. 5); the size of the shrimp which may be taken (Section 6); the kind of trawls which may be used (Section 7). Section 13 provides, in express terms, that after the heads and hulls are taken from the shrimp, they may be shipped in interstate commerce without restriction or reservation, and after the heads and hulls are treated in the manner provided in the act, they likewise may be dealt with as the owner sees fit. Sections 14, 15 and 16 provide for the issuing of license. Section 19 provides the punishment for violation of the act. By section 28 canneries out of the state are allowed a certain length of time to adjust themselves to the act, that is to say, to move to the state of Louisiana.

When we turn to the Oyster Act, sections 2 and 3 are almost identical with sections 4 and 13 of the Shrimp Act. They each expressly permit the purchase and sale of oysters within the state of Louisiana, and permit the sale and every part thereof in interstate commerce, after the shrimp and oysters shall have been packed and canned and the hulls and shells treated, as provided in the act, to pass into interstate commerce. Section 13 of the oyster act provides the license to be paid therefor and contains the following provision in respect to vessels or cargoes:

"Vessels purchasing for resale, oysters to make up a cargo, shall procure a license permitting the conduct of such business, which license shall be graded upon the tonnage of the boat employed and on the following basis, to-wit:"

Sections 22, 23 and 24 provide for the punishment for violation of the act; and section 29 extends an invitation to canners outside of the state to adjust their business to the changed conditions by moving their plants to Louisiana.

The entire purpose of the law, as shown by the Legislation, by undisputed facts, and from an examination of the acts under review, demonstrate that the legislature of the state of Louisiana did not intend, in the enactment of the measures complained of, to keep either shrimp or oysters in the state of Louisiana, but the acts were passed with full knowledge that they were articles of interstate commerce, and the entire machinery, provided for, and set up in the measures complained of, contemplate the preparation for and the shipment of the shrimp and oysters in interstate commerce. In the preparation of these commodities for shipment in interstate commerce, the state of Louisiana contemplates and requires the full measure of protection afforded by the clause of the constitution of the United States. The acts and each of them, with the legislative history thereof, interpreting the acts in the light of the undisputed facts in this case, establish that the people of Louisiana in the passage thereof, did not contemplate or intend that these articles would remain in the state for the benefit of its people as a food, but intended that they should immediately pass into interstate commerce, and in the world market for such commodities in competition with other states and countries. Therefore, we respectfully submit that the acts were not passed by the legislature of the state of Louisiana in the legitimate exercise of their police power, but under the guise of exercising the police power of the state such measures were enact-

ed, and in their natural and normal operation directly burden interstate commerce between the states. The exexercise of the police power, which includes the conservation of its natural resources, is a shield to be used by a state in order to secure the welfare of its people. Such right, however, must be exercised in accordance with and subject to the fundamental law of the land. The Congress of the United States granted these lands with the natural resources thereof to the sovereign state of Louisiana, impressed, however, with the constitution and laws of the United States, the supreme law of the land. Such right can never be exercised as a sword to destroy commerce between the states of the Union. The acts were not passed with any purpose of keeping the commodities within the borders of the state, nor for the purpose of regulating the sale and transfer thereof among the citizens of the state in intrastate commerce.

The position of opposing counsel is that the state held the title to the shrimp and oysters in trust for its people, and that it may attach any condition which it sees fit to the passing of the title from the state as trustee to other persons. The fallacy of this position lies in the fact that it assumes the right of the state, for all substantial purposes, to divest itself of title to the shrimp and oysters and impose as a condition precedent to the passage of the title, a condition which violates the constitution of the United States. It is well settled that although a state may confer a privilege, it may not, in doing so, attach to its grant a condition depriving the grantee of a constitutional right.

The question was directly presented in the case of *Frost v. Commission*, 271 U. S. 583, 70 L. ed 1101. In that case there was under review an act of the state of California regulating the transportation over public highways of automobiles, trucks, etc., by the Railroad Commission. The act provided that a license and certificate of public convenience should be obtained before any truck should be so operated. The plaintiff in error was

transporting property in interstate commerce under a single priavte contract for stipulated compensation. Under the act he was unable to secure the certificate except upon becoming a public carrier. Suit was brought to enjoin the enforcement of the act, and the view was presented that the state had the right, in the exercise of its police power, to regulate the use of public highways, and in permitting the plaintiff in error to do so it was conferring a privilege to which it could attach any condition it saw fit. The court held that the condition was void, using the following language:

> "That, consistently with the due process clause of the 14th amendment, a private carrier cannot be converted against his will into a common carrier, by mere legislative command, is a rule not open to doubt and is not brought into question here. It was expressly so decided in *Michigan Public Utilities Commission v. Duke,* 266 U. S. 570, 60 L. ed. 445, 36 A. L. R. 1105, 45 Sup. Ct. Rep. 191. See also *Hissen v. Guran,* 112 Ohio St. 59, 146 N. E. 808; *State Ex Rel Public Utilities Commission v. Nelson,* 65 Utah, 457, 42 L. R. A. 849, 238 Pac. 237. The naked question which we have to determine therefore, is whether the state may bring about the same results by imposing the unconstitutional requirement as a condition precedent to the enjoyment of a privilege, which, without so deciding, we shall assume to be within the power of the state altogether to withhold if it sees fit to do so. Upon the answer to these questions, the constitutionality of the statute now under review will depend.
>
> "There is involved in the inquiry not a single power, but two distinct powers. One of these—the power to prohibit the use of the public highways in proper cases—the state possesses; and the other—the power to compel a private carrier to assume against his will the duties and burdens of a common carrier—the state does not possess. It is clear that

any attempt to exert the latter, separately and substantively, must fall before the paramount authority of the constitution. May it stand in the conditional form in which it is here made? If so, constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which, though, in form voluntary, in fact lacks none of the elements of compulsion. Having regard to form alone, the act here is an offer to the private carrier of a privilege, which the state may grant or deny, upon a condition, which the carrier is free to accept or reject. In reality, the carrier is given no choice, except a choice between the rock and the whirlpool—an option to forego a privilege which may be vital to his livelihood, or to submit to a requirement which may constitute an intolerable burden.

"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition, that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditons which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties imbedded in the constitution of the United States may thus be manipulated out of existence.

"The prior decisions of this sort amply justify this conclusion. In *Paul v. Virginia,* 8 Wall. 168, 19 L. ed. 357, the rule was stated to be that the state, having the power to exclude foreign corporations from its limits, may admit them upon such terms and conditions as the state may think proper to impose. But, in *Home Ins. Co. v. Morse,* 20 Wall. 445, 22 L. ed. 365, it was said that this sweeping language must be understood with reference to the language of that case, and that it could not be extended to include conditions repugnant to the constitution and laws of the United States. In *Barron v. Burnside,* 121 U. S. 186, 30 L. ed. 915, 1 Inters. Com. Rep. 295, 7 Sup. Ct. Rep. 931, this limitation was expressly reaffirmed. Mr. Justice Blatchford, speaking for the court, said, page 200: 'The question as to the right of a state to impose upon a corporation engaged in interstate commerce the duty of obtaining a permit from the state, as a condition of its right to carry on such commerce, is a question which it is not necessary to decide in this case. In all the cases in which this court has considered the subject of the granting by a state to a foreign corporation of its consent to the transaction of business in the state, it has uniformly asserted that no conditions can be imposed by the state which are repugnant to the constitution and laws of the United States. *Lafayette Ins. Co. v. French,* 18 How. 404, 15 L. ed. 451; *Ducat v. Chicago,* 10 Wall. 410, 19 L. ed. 972, *Home Ins. Co. v. Morse,* 20 Wall. 445, 22 L. ed. 365; *Sinclair v. Cox.* 106 U. S. 350, 27 L. ed. 222, 1 Sup. Ct. Rep. 354, *Fire Ass'n of Phil. v. N. Y.* 119 U. S. 110, 30 L. ed. 342, 7 Sup. Ct. Rep. 108.'

"In *Southern Pac. Co. v. Denton,* 146 U. S. 202, 36 L. ed. 943, 13 Sup. Ct. Rep. 44, there was under consideration a Texas statute requiring a corporation desiring to do business in the state to agree that

it would not remove any suit from a court of the state into the circuit Court of the United States. This court held the statute invalid, saying:

" 'But that statute, requiring the corporation, as a condition precedent to obtaining a permit to do business within the state, to surrender a right and privilege secured to it by the constitution and laws of the United States, was unconstitutional and void, and could give no validity or effect to any agreement or action of the corporation in obedience to its provision.'

"After the Denton case, came *Security Mutual Life Ins. Co. v. Prewitt,* 202 U. S. 246, 50 L. ed. 1013, 26 Sup. Ct. Rep. 619, 6 Ann. Cas. 317. That decision purported to follow the case of *Doyle v. Continental Ins. Co.* 94 U. S. 535, 24 L. ed. 148, and to differentiate *Barron v. Burnside,* supra; and it was thought to have materially modified the rule laid down in the Morse, Burnside and Denton cases. But, however, this may be, both the Prewitt and Doyle cases have been quite recently overruled, and the views of the minority therein expressed declared to be now the law of this court. *Terral v. Burke Construction Co.,* 257 U. S. 529, 66 L. ed. 352, 21 A. L. R. 186, 42 Sup. Ct. Rep. 188. In the light of this declaration, these dissenting views become pertinent and controlling. In the Doyle case, Mr. Justice Bradley, speaking for the minority, said (Pages 543 and 544):

" 'Though a state may have the power, if it sees fit to subject its citizens to the inconvenience of prohibiting all foreign corporations from transacting business within its jurisdiction, it has no power to impose unconstitutional conditions upon their doing so. Total prohibition may produce suffering, and may manifest a spirit of unfriendliness toward sister states; but prohibition, except upon conditions derogatory to the jurisdicion and sovereignty of the

United States, is mischievous, and productive of hostilities and disloyalty to the general government. If a state is unwise enough to legislate the one, it has no constitutional power to legislate the other. * * * *

" 'The whole thing, however free from intentional disloyalty, is derogatory to that mutual comity and respect which ought to prevail between the state and general governments, and ought to meet the condemnation of the courts whenever brought within their proper cognizance.'

"In the Prewitt case, Mr. Justice Day dissenting, said, (Pages 267 and 269):

" 'In the opinion of the court in this case, the doctrine that a corporation connot be permitted to be deprived of its right to do business because of the assertion of a federal right is said not to be denied, because the right of a foreign corporation to do business in a state is not secured or guaranteed by the federal constitution. Conceding the soundness of this general proposition, it by no means follows that a foreign corporation may be excluded solely because it exercises a right secured by the federal constitution. For, conceding the right of a state to exclude foreign corporations, we must not overlook the limitation upon the right, now equally well settled in the jurisprudence of this court, that the right to do business cannot be made to depend upon the surrender of a right created and guaranteed by the federal constitution. If this were otherwise the state would be permitted to destroy a right created and protected by the federal constitution under the guise of exercising a privilege belonging to the state, and, as we have pointed out, the state might thus deprive every foreign corporation of the right to do business within its borders, except upon the condition that it strip itself of the protection given it by the federal constitution. * * *

" 'While we concede the right of a state to exclude foreign corporations from doing business within its borders for reasons not destructive of federal rights, we deny that the right can be made to depend upon the surrender of the protection of the federal constitution, which secures to alien citizens the right to resort to the courts of the United States.

" 'In the cases decided in this court subsequently to *Barron v. Burnside*, while the general proposition is affirmed that a state may prescribe conditions upon which a foreign corporation may do business within its borders, in no one of them is it asserted that the state may exclude or expel such corporations because they insist upon the exercise of a right created by the federal constitution. On the contrary, this court has repeatedly said that such right of exclusion was qualified by the superior right of all citizens to enjoy the protection of the federal constitution.'

"In *Western U. Telg. Co. v. Kansas*, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190, upon a full review of the prior decisions, the principle set forth in the foregoing quotations was again reaffirmed. That case involved the validity of a Kansas statute which provided that a corporation of another state, though engaged in interstate business, must, as a condition of doing local business, pay to the state certain graduated percentages of its capital stock. It was held that this requirement operated as a burden on the interstate business of the company, in violation of the commerce clause of the constitution, as well as a tax on its property beyond the limits of the state, in violation of the due process of law clause; that, thus, it was violative of the constitutional rights of the company; and that the right of the company to continue to do business in Kansas was

not and could not be affected by the condition. The general principle was again announced in the following words (Pages 47 and 48):

" 'The right of the Telegraph Company to continue the transaction of local business in Kansas could not be made to depend upon its submission to a condition prescribed by that state, which was hostile both to the letter and spirit of the constitution. The company was not bound, under any circumstances, to surrender its constitutional exemption from state taxation, direct or indirect, in respect to its interstate business, and its property outside of the state, any more than it would have been bound to surrender any other right secured by the National Constitution.'

"Since that decision, the same principle has been reiterated many times and never departed from. *Pullman Co. v. Kansas*, 216 U. S. 56, 63, 54 L. ed. 378, 384, 30 Sup. Ct. Rep. 232; *International Textbook Co. v. Pigg*, 217 U. S. 91, 54 L. ed. 678, 27 L. R. A. (N. S.) 493, 30 Sup. Ct. Rep. 481, 18 Ann. Cas. 1103; *Herndon v. Chicago, R. I & P. Co.*, 218 U. S. 135, 158, 54 L. ed. 970, 978, 30 Sup. Ct. Rep. 633; *Harrison v. St. Louis &S. F. R. Co.*, 232 U. S. 318, 332, 58 L. ed. 621, 626, L. R. A. 1915F 1187, 34 Sup. Ct. Rep. 333; *Looney v. Crane Co.*, 245 U. S. 178, 187, 62 L. ed. 230, 235, 38 Sup. Ct. Rep. 85; *International Paper Co. v. Massachusetts*, 246 U. S. 135, 142, 143, 62 L. ed. 624, 629, 630, 38 Sup. Ct. Rep. 292, Ann. Cas. 1918C, 617; *Western U. Teleg. Co. v. Foster*, 247 U. S. 105, 114, 62 L. ed. 1006, 1016, 1 A. L. R. 1278, P. U. R. 1918D, 865, 38 Sup. Ct. Rep. 438; *Public Utility Comrs. v. Ynchausti & Co.*, 251 U. S. 401, 404, 64 L. ed. 327, 332, 40 Sup. Ct. Rep. 277; *Terral v. Burke Constr. Co.*, supra; *Missouri ex rel. Burnes Nat. Bank v. Duncan*, 265 U. S. 17, 24, 68 L. ed. 881, 882, 44 Sup. Ct. Rep. 427; *Fidelity & D. Co. v. Tafoya*, 270 U. S. 246, ante, 664, 46 Sup. Ct. Rep. 331 (decided March 15, 1926).

"And the principle, that a state is without power to impose an unconstitutional requirement as a condition for granting a privilege, is broader than the application thus far made of it. In *Western U. Telg. Co. v. Foster*, 247 U. S. 105, 62 L. ed. 1006, 1 A. L. R. 1278, P. U. R. 1918D, 865, 38 Sup. Ct. Rep. 438, two telegraph companies were engaged in transmitting the quotations of the New York Stock Exchange among the states. This was held to be interstate commerce, and an order of the public service commission of Massachusetts requiring the companies to remove a discrimination, was held to infringe their constitutional rights. One of the grounds upon which the order was defended was that it rested upon the power of the state over the streets which it was necessary for the telegraph to cross. That contention was answered broadly (page 114):

" 'But if we assume that the plaintiffs in error under their present charters could be excluded from the streets, the consequence would not follow. Acts generally lawful may become unlawful when done to accomplish an unlawful end (*United States v. Reading Co.*, 226 U. S. 325, 357, 57 L. ed. 243, 254, 33 Sup. Ct. Rep. 90), and a constitutional power cannot be used by way of condition to attain an unconstitutional result (*Western U. Teleg. Co. v. Kansas*, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190; *Pullman Co. v. Kansas*, 216 U. S. 56, 54 L. ed. 378, 30 Sup. Ct. Rep. 232; *Sioux Remedy Co. v. Cope*, 235 U. S. 197, 203, 59 L. ed. 193, 197, 35 Sup. Ct. Rep. 57). The regulation in question is quite as great an interference as a tax of the kind that repeated decisions have held void. It cannot be justified under the somewhat ambiguous term of police powers.' "

And in almost the last expression of this court upon the subject, *Missouri ex rel Burnes Nat. Bank v. Duncan*, 265 U. S. 17, 68 L. ed. 881, 44 Sup. Ct. Rep. 427, the rule is none the less broadly but more succinctly stated to be (p. 24):

> " 'The states cannot use their most characteristic powers to reach unconstitutional results. *Western U. Telg. Co. v. Kansas*, supra; *Pullman Co. v. Kansas*, 216 U. S. 56, 54 L. ed. 378, 30 Sup. Ct. Rep. 232; *Western U. Teleg. Co. v. Foster*, supra.'
>
> " 'We hold that the act under review, as applied by the court below, violates the rights of plaintiffs in error as guaranteed by the due process clause of the 14th amendment; and that the privilege of using the public highways of California in the performance of their contract is not and cannot be affected by the unconstitutional condition imposed. *Western U. Teleg. Co. v. Kansas*, supra, p. 48 (54 L. ed. 374, 30 Sup. Ct. Rep. 190)."

The direct question was presented in the case of *Hanover Fire v. Carr*, 71 L. ed. 372, 272 U. S. 494. In that case a tax imposed upon a foreign fire insurance company was sought to be sustained on the theory that the same was a condition precedent to the right of the company to do business in the state; that the state might have excluded the company altogether, and could, therefore, attach any condition which it saw fit. The court used the following language: (page 379)

> "The general principle upon which the Supreme Court of Illinois holds the tax complained of herein to be valid is that the payment of it is part of the condition which the petitioner as a foreign insurance company is obliged to perform in order to maintain and retain its right to do business in the state. It was settled in the *Bank of Augusta v. Earle*, 13 Pet. 519, 10 L. ed. 274; *Paul v. Virginia*, 8 Wall. 168, 19 L.

ed. 357; *Ducat v. Chicago*, 10 Wall. 410, 19 L. ed. 972, and *Horn Silver Min. Co. v. New York*, 143 U. S. 305, 36 L. ed. 164, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403, that foreign corporations cannot do business in a state except by the consent of the state; that the state may exclude them arbitrarily or impose such conditions as it will upon their engaging in business within its jurisdiction. But there is a very important qualification to this power of the state, the recognition and enforcement of which are shown in a number of decisions of recent years. That qualification is that the state may not exact as a condition of the corporations engaging in business within its limits that its rights secured to it by the Constitution of the United States may be infringed. This is illustrated in respect to the breach of the commerce clause of the Constitution by the cases of *Sioux Remedy Co. v. Cope*, 235 U. S. 197, 203, 59 L. ed. 193, 197, 35 Sup. Ct. Rep. 57, and *Looney v. Crane Co.*, 245 U. S. 178, 188, 62 L. ed. 230, 235, 38 Sup. Ct. Rep. 85. It is illustrated in cases in which a provision of a state law revoking the license of a foreign corporation for exercising its constitutional right to remove suits brought against them from the state courts to the federal courts has been held void; (*Teral v. Burke Constr. Co.* 257 U. S. 529, 66 L. ed. 352, 21 A. L. R. 186, 42 Sup. Ct. Rep. 188): in cases in which the state has vainly attempted to subject foreign corporations to a payment of a tax which is a tax not only in the state but also on the property without the state, in violation of the due process clause of the 14th amendment (*Western U. Telg. Co. v. Kansas*, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190; *St. Louis Cotton Compress Co. v. Arkansas*, 260 U. S. 346, 67 L. ed. 297, 43 Sup. Ct. Rep. 125); and finally, in cases of a class to which it is contended the present case belongs, where a tax or license law operates to deny to the foreign corporations the equal pro-

tection of the laws (*Southern R. Co. v. Greene*, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Rep. 287, 17 Ann. Cas. 1247; *Air-way Electric Appliance Corp. v. Day*, 266 U. S. 71, 69 L. ed. 169, 45 Sup. Ct. Rep. 12)."

So, in the present case, even if it be true that the state could condition the divesting of its own title, it cannot, thereby, place a direct burden upon interstate commerce. In other words, as in the present case, where the state has consented that every portion of the shrimp and oysters may pass into interstate commerce and has consented to the divesting of its title, completely, and contemplates that the commodities which form the subject of interstate commerce trade will, in due course, enter into interstate commerce, cannot, under the guise of subserving its natural resources, place a direct burden upon interstate commerce.

We especially d[illegible]t the attention of the court to the case of *Sioux Remedy Co. v. Cope*, 235 U. S. 197, 59 L. ed. 193. In that case the state of South Carolina had passed an act requiring foreign corporations before doing business in the state, to appoint an agent upon whom service of process could be had. This act was passed in furtherance of the alleged police power of the state so that the citizens of the state would have a remedy against the foreign corporation for breach of contract, fraud, etc. The state had the right, of course, to preclude the corporation doing business in the state. This court held, however, that it could not attach a condition thereto depriving the corporation of a constitutional right, using the following language:

"It may be conceded in a general way that a state may restrict the right of a foreign corporation to sue in its courts. *Bank of Augusta v. Earle*, 13 Pet. 519, 589-591, 10 L. ed. 274, 308, 309; *Anglo-American Provision Co. v. Davis Provisio nCo.*, 191 U. S. 373, 48 L. ed. 225, 24 Sup. Ct. Rep. 92. And in the same general way it may be conceded that a

state may restrict the right of such corporations to engage in business within its limits *Paul v. Virginia*, 8 Wall. 168, 19 L. ed. 357; *Hooper v. California*, 155 U. S. 648, 39 L. ed. 297, 5 Inters. Com. Rep., 610, 15 Sup. Ct. Rep. 207. But the power so to deal with these subjects, like all other state powers, can only be exerted within the limitations which the Constitution of the United States places upon state action. *Missouri v. Lewis* (*Bowman v. Lewis*) 101 U. S. 22, 30, 25 L. ed. 989, 992; *Blake v. McClung*, 172 U. S. 239, 256, 43 L. ed. 432, 438, 19 Sup. Ct. Rep., 165; *Chambers v. Baltimore & O. R. Co.* 207 U. S. 142, 148, 52 L. ed. 143, 146, 28 Sup. Ct. Rep. 34; *Western U. Teleg. Co. v. Kansas*, supra, p. 33; *Southern R. Co. v. Greene*, 216 U. S. 400, 413, 54 L. ed. 536, 540, 30 Sup. Ct. Rep. 287, 19 Ann. Cas. 1247. One of these limitations is that before indicated, arising from the commerce clause, whose operation, as this court has said, is such that a corporation authorized by the state of its creation to engage in interstate commerce 'may not be prevented by another state from coming into its limits for all the legitimate purposes of such commerce.' *Western U. Teleg. Co. v. Kansas*, supra, p. 27. we think that when a corporation goes into a state other than that of its origin to collect, according to the usual or prevailing methods, the purchase price of merchandise which it has lawfully sold therein in interstate commerce, it is there for a legitimate purpose of such commerce, and that the state cannot, consistently with the limitation arising from the commerce clause, obstruct or hamper the attainment of that purpose. If it were otherwise, the purpose of the Constiution to secure and maintain the freedom of commerce by whomsoever conducted could be largely thwarted by the states and the commerce itself seriously crippled.

"We are thus brought to the question whether the particular conditions imposed by this statute can be sustained when applied to rights of action like that disclosed in the present case. Without doubt a foreign corporation seeking to enforce such a right in the courts of a state may be required to conform to the prevailing modes of proceeding in those courts, and to submit to the usual rules respecting costs, the giving of security therefor (see *Blake v. McClung*, 172 U. S. 239, 256, 43 L. ed. 432, 438, 19 Sup. Ct. Rep. 165), and the like. But incidents of this character commonly attending litigation may be put out of view, for it is with something quite different that we are here concerned. The conditions which the statute imposes are: First, that the company shall file in the office of the secretary of state an authenticated copy of its charter or articles of incorporation; second, that it shall appoint a resident agent upon whom process may be served in any action against it, and shall file a copy of such appointment in the office of the secretary of state and of the register of deeds of the county where the agent resides; and, third, that it shall pay the fees incident to filing and recording these instruments, approximating $25.00 It will be perceived that these are the conditions upon which many of the states permit foreign corporations to engage in business within their limits when no constitutional limitation is involved; that is, when the character of the business is that the state is free to exclude such corporations or to admit them upon terms acceptable to it. But here the conditions are sought to be applied in a different way and to a different situation falling within the reach of the commerce clause. Out of this arises the question of their validity. We think the mere statement of the conditions shows that they have no natural or reasonable relation to the right to sue which they are intended to restrict. They have no bearing upon the merits or any question of procedure or costs, are not directed against any

abusive use of judicial process, and are plainly onerous. The second one, respecting the appointment of a resident agent upon whom process may be served, is particularly burdensome, because, as the supreme court of the state has said, it requires the corporation to subject itself to the jurisdiction of the courts of the state in general as a prerequisite to suing in any of them; that is to say it withholds the right to sue even in a simple instance until the corporation renders itself amenable to suit in all the courts of the state by whosoever chooses to sue it there. If one state can impose such a condition others can, and in that way corporations engaged in interstate commerce can be subjected to great embarrassment and serious hazards in the enforcement of contractual rights directly arising out of and connected with such commerce. As applied to such rights we think the conditions are unreasonable and burdensome, and therefore in conflict with the commerce clause.

"These views require that the judgment be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

The legislative enactments under review bear no relation to conservation of resources. Those permitted to fish are invited upon obtaining a license to catch all the shrimp within their capacity during the open season, and the same is true of the oysters. Those who take the tail meat off of the shrimp and the shell off of the oysters may ship them out without reservation or restriction; those who convert the hulls and heads of shrimp into shrimp bran, or utilize the shells of oysters for chicken feed or road building material, may ship the entire material out of the state without restriction or reservation; nothing is required to be kept in the state. The situation may be summed up as follows:

(a) Residents and corporations, the latter operating drying plants, within the state may take shrimp from the waters and oysters from the reefs wihout reservation or restriction. Section 4, Shrimp Act; Section 2, Oyster Act.

(b) They can without any kind if limitation pack or dry the shrimp when caught, can the oysters when taken from the reefs. Section 4, Shrimp Act; Section 2, Oyster Act.

(c) Within the state the shrimp or oysters may be sold to any person, firm or corporation. Section 13, Shrimp Act; Section 4, Oyster Act.

(d) Shrimp or oysters may be purchased by any firm or corporation from persons who catch the same, or from persons who have purchased the same from some corporation or persons who have caught them. Section 13, Shrimp Act; Section 4, Oyster Act.

(e) After the shrimp are hulled in Louisiana, and the shells taken off of the oysters, the meat of the shrimp or the shelled oysters may be shipped out of the state without restriction or reservation.

(f) After the hulls of the shrimp and the shells of the oysters are manufactured into the required by-product in Louisiana every particle thereof may be shipped in interstate commerce.

The whole arrangement is set up in contemplation of every part of the shrimp and the oysters, either in the raw or the manufactured form, passing out of the state into interstate commerce in a world market in competition with similar plants in the United States and foreign countries.

Interstate commerce comprises not only the shipment of property from one state to another, but also protects the dealings, negotiations and contracts in respect thereto.

In the case of *Dahnke Milling Co. v. Bondurant*, 257 U. S. 262, 66 L. ed. 239, the plaintiff went into the State of Kentucky and made a contract with a citizen of

the latter state, whereby the citizen of Kentucky was to prepare and deliver, f. o. b. cars in Kentucky, certain grain to be shipped to the plaintiff in the State of Tennessee. There was a breach of the contract, and the plaintiff, the purchaser, filed suit for damages. The state court held that the failure of the plaintiff corporation to file a copy of its charter, as required by the Kentucky statutes, rendered the contract unenforceable. The Supreme Court of the United States held that the act of buying in the State of Kentucky was a step in interstate commerce and the state statute was void, using the folfolwing language:

> "Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. Where goods in one state are transported into another for purposes of sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination, and while they are in the original packages. *Brown v. Maryland,* 12 Wheat. 419, 446, 6 L. ed. 678, 688, 689; *American Steel & Wire Co. v. Speed,* 192 U. S. 500, 519, 48 L. ed. 538, 546, 24 Sup. Ct. Rep. 365. On the same principal, where goods are purchased in one state for transportation to another, the commerce includes the purchase quite as much as it does the transportation. *American Exp. Co. v. Iowa,* 196 U. S. 133, 143, 49 L. ed. 417, 422, 25 Sup. Ct. Rep. 182. This has been recognized in many decisions construing the commerce clause. Thus, it was said in *Walton v. Missouri,* 91 U. S. 275, 23 L. ed. 347, 349: 'Commerce is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all its forms, including the transportation, purchase, sale and exchange of commodities.' In *Kidd v. Pearson,* 128 U. S. 1, 20, 32 L. ed. 346, 350, 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6, it was tersely said: 'Buying and selling and the trans-

portation incidental thereto constitute commerce.' In *U. S. v. E. C. Knight Co.*, 156 U. S. 1, 13, 39 L. ed. 325, 329, 15 Sup. Ct. Rep. 249, 'Contracts to buy, sell or exchange goods to be transported among the several states' were declared 'part of interstate trade of commerce.' And in *Addyston Pipe & Steel Co. v. United States* 174 U. S. 211, 241, 44 L. ed. 136, 147, 20 Sup. Ct. Rep. 95, the court referred to the prior decisions as establishing that 'interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, and also, the purchase, sale and exchange of commodities. In no case has the court made any distinction between buying and selling, or between buying for transportation to another state and transporting for sale in another state. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling, it was not material whether it came first or last.''

The direct question was presented in the case of *Lemke v. Farmers' Grain Co.*, 258 U. S. 50, 66 L. ed. 458. In that case, the defendants in error were operating a series of grain elevators in the State of North Dakota, where grain was purchased with a view to being resold. A small portion thereof was sold in the State of North Dakota, but the greater portion thereof was sold and shipped out of the State. The state of North Dakota passed an act regulating the operation of the state elevators. An injunction was obtained in the United States Court on the ground that the act was an interference with interstate commerce. The Federal Court in North Dakota so held, and the Supreme Court of the United States sustaining the decree, used the following language:

"That such course of dealing constitutes interstate commerce, there can be no question. The court has so held in many cases, and we have had occasion to discuss and decide the nature of such commerce in a case closely analogous in its facts, and altogether so in principle. *Dahnke v. Walker Mill Co. v. Bondurant*, decided December 12th, 1921, (257 U. S. 282, ante, 239, 43 Sup. Ct. Rep. 106.) In that case the facts disclose that a company organized in Tennessee and carrying on business there, went into the State of Kentucky, and, through an agent there, bought wheat for shipment to the company's mill in Tennessee. The state court held that he transaction was merely a purchase of wheat in Kentucky, and made the Tennessee Company amenable to the regulatory statutes of the state. The court rejected the conclusion of the state court, and held that the buying, no less than the selling, was a part of interstate commerce, committed to national control by the Federal Constitution. Applying the principal of that decision, and the previous decisions in this court, cited in the opinion, the complainant's course of dealing in the buying of grain, which it purchased and sold under the circumstances as herein disclosed, was interstate commerce. Being such, the state could not regulate the business by a statute which had the effect of control and burden interstate commerce."

"Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between a definition of interstate commerce where the right of state taxation was involved, or manufacure or commerce of an interstate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of Federal

control. Cases of that type are not in conflict with principles recognized as controlling here. None of them indicates, much less decides, that interstate commerce does not include the buying and selling of products for shipment beyond state lines. It is true, as appellants contend, that after the wheat was delivered at complainant's elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sale in the Minneapolis market. That was the course of business, and fixed and determined the interstate character of the transactions. *Swift & Co. v. United States,* 196 U. S. 376, 49 L. ed. 518, 25 Sup. Ct. Rep. 276; *Eureka Pipe Line Co. v. Hallahan,* decided by this court December 12, 1921, (257 U. S. 265, ante, 227, 42 Sup. Ct. Rep. 101); and *United States Fuel Co. v. Hallahan,* decided the same day, (257 U. S. 277, ante, 234, 42 Sup. Ct. Rep. 105)."

The case of *Stafford v. Wallace,* 258 U. S. 495, 66 L. ed. 735, was a case which involved the validity of the Packers & Stockyards Act of Congress, approved August 15, 1921. The act provided for the supervision by a federal authority of the business of the commission men and of live stock dealers in the great stockyards of the country. It was contended, among other things, in that case that the act was unconstitutional, because a portion of the business and transactions transacted at the stockyards was intrastate, and that such business and transactions Congress could not regulate. The Supreme Court of the United States in passing on the question reviewed the case of *Swift & Co. v. United States,* 196 U.S. 375, 49 L. ed. 518, and used the following language, sustaining the constitutionality of the act:

"The Swift case presented in this court the sufficiency of a bill in equity brought against substantially the same packing firms as those against whom

this legislation is chiefly directed, charging them as a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live stock markets of the different states, to bid upon prices for a few days in order to induce the cattlemen to send their stock to the stockyards, to fix prices at which they would sell, and to that end to restrict shipments of meat when necessary to establish a uniform credit to dealers, and to keep a black list, to make uniform and improper charges for cartage, and finally to get less than lawful rates from the railroads, to the exclusion of competitors, and all of this in a conspiracy and single connected scheme to monopolize the supply and distribution of fresh meats throughout the United States. In holding the bill good, this court said, (p. 396): (The scheme as a whole seems to us to be within the reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body, and, for all that we can say, to accomplish it. * * * It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. *Aikens v. Wisconsin*, 195 U. S. 194, 206, 49 L. ed. 154, 260, 25 Sup. Ct. Rep. 3. The state gives this proceeding against combinations in restraint of commerce among the states and against attempts to monopolize the same. Intent is also essential to such a combination and is essential to such an attempt."

Again (p. 396 and 397): "Although the combination it alleges embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote or merely probable. * * * There the subject matter is sales, and the very point of the combination is to restrain and monopolize commerce among the states in respect to such sales"

Again, (p. 398 and 399), in answer to the object that what was charged did not constitute a case involving commerce among the states, the court said:

> "Commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part of and incident of such commerce. What we say is true, at least, of such a purchase, by residents in another state from that of the seller and of the cattle."

The application of the commerce clause of the Constitution in the Swift case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are overflowing, are, in their very essence, the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect to such a stream, and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered and without reference to their association with the movement of which thew were an essential and subordinate part.

The principles of the Swift case have become a fixed rule of this court in the construction and application of the commerce clause. Its latest expression on the subject is found in *Leake v. Farmers' Grain Co.* decided at

this term, February 27, 1922, (258 U. S. 50, ante, 458, 42 Sup. Ct. Rep. 244). In that case it was held on the authority of the Swift case, that the delivery and sale of wheat by farmers to local grain elevators in North Dakota, to be shipped to Minneapolis, when practically all the wheat purchased by such dealers was so shipped, and the price was fixed by that in Minneapolis market, less profit and freight, constituted a course of business and determined the interstate character of the transaction. Accordingly, a state statute which sought to regulate the price and profit of such sales, and was found to interfere with the free flow of interstate commerce, was declared invalid as a violation of the commerce clause. Similar conformation of the principle of the Swift case is to be found in *Dahnke, Walker Mill Co. v. Bondurant,* 257 U. S. 282, ante, 239, 42 Sup. Ct. Rep. 106 in *Eureka Pipe Line v. Hallahan,* 257 U. S. 277, ante 234, 42 Sup. Ct. Rep. 105, all decided December 12, 1921; in *Western U. Tel. Co. v. Foster,* 247 U. S. 105, 113, 62 L. ed. 1006, 1015; 1. L. R. A. 1278, P. U. R. 1918B, 865, 38 Sup, Ct. Rep. 438; in *United States v. Reading Co.* 226 U. S. 324, 367, 368, 57 L. ed. 243, 258, 33 Sup. Ct. Rep. 90; *Railroad Commission v. Worthington,* 225 U. S. 101, 108, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; *Lowe v. Lawler,* 208 U. S. 274, 301, 52 L. ed. 488, 502, 28 Sup Ct. Rep. 301, 13 Ann. Cas. 815."

The doctrine was examined in the case of *Flanagan v. Federal Coal Co.,* 267 U. S. 222, 69 L. ed. 583.

In the case of *Shafer, Attorney General of North Dakota, v Farmers' Grain Co.,* 268 U. S. 189, 69 L. ed 909, it appeared that after the decision of the Supreme Court of the United States in the case of *Lemke v. Farmers' Grain Co.* supra, the State of North Dakota passed a new act regulating elevators. The Supreme Court of the United States again held that the act was an interference with interstate commerce, using the following language:

"We think it plain that in subjecting the buying for interstate shipments to the conditions and measure of control just shown, the act directly interferes with and burdens interstate commerce, and is an attempt to prescribe by the state authorities rules under which an important part of such commerce shall be conducted. This no state can do consistently with the commerce clause.

"The defendants cite several cases as making for a different conclusion, but we do not so read them. In some the commerce clause was in no way involved, and those in which it was involved give no support to what is attempted in the act now before us. In *Munn v. Illinois*, 94 U. S. 113, 123, 135, 34 L. ed. 77, 83, 87, the question was whether as respects an elevator devoted to storing grain for hire, the state could regulate the storage charge where part of the grain reached the elevator, or was destined to leave it, through the channels of interstate commerce. The court held such a regulation admissible because of the public character of the elevator, and because interstate commerce was affected only incidentally and remotely. No restriction on buying or shipping was involved. In *W. W. Cargill Co. v. Minnesota*, 180 U. S. 452, 45 L. ed. 619, 21 Sup. Ct. Rep. 423, the court had before it a state statute. Much of which had been pronounced unconstitutional by the state court. In sustaining a provision which remained, the court said, p. 470: 'The statute puts no obstacle in the way of the purchase by the defendant company of grain in the state, or the shipment out of the state of such grain as it purchased.' Plainly, the case is not in point here. In *Merchants Exch. v. Missouri*, 248 U. S. 365, 63 L. ed. 300, 39 Sup. Ct. Rep. 114, the statute involved required that public weighers appointed for the purpose should do the weighing and issue weight certificates at elevators used for storing or transferring grain for hire, and prohibited any other per-

son from issuing weight certificates at an elevator where a public weigher was stationed. Objection was made to the prohibition on the ground that, as applied to grain received from or shipped to points without the state, it burdened interstate commerce. Of course, the objection was overruled, the statute being an admissible regulation of the business of conducting an elevator for hire, like the statute considered in *Munn v. Illinois*.

"The defendants make the contention that we should assume the existence of evils justifying the people of the state in adopting the act. The answer is that there can be no justification for the exercise of a power that is not possessed. If the evils suggested are real, the power of correction does not rest with North Dakota but with Congress, where the Constitution intends that it shall be exercised with impartial regard for the interests of the people of all the states that are affected."

Interstate commerce as applied to commercial transactions as in that of Taxation.

Coe v. Erroll, 116 U. S. 517, was a taxation case. In that case the plaintiff in error accumulated a lot of logs in the state of New Hampshire which he was intending to ship into the state of Maine to be manufactured and sold in interstate commerce. The logs had been placed upon the banks of a stream and were to be shipped whenever the water came up, which might be several months. The local authorities assessed the logs for taxation, and it was contended by the owner that because he intended at some indefinite future date to ship them into Maine where they were to be manufactured into lumber, and then sold in interstate commerce that the logs were free from taxation in the state of New Hampshire. It will be noted that the logs would not move in interstate commerce until two things were done: They must be floated down the river from the state of New Hampshire to the state of Maine, then undergo manufacture and prepara-

tion, after which they were to be offered for sale in interstate commerce. The real distinction lies, however, in the recognition of the principle that interstate commerce as applied to a given commodity when a question of taxation is presented, is not the same as applied to commodities under dissimilar circumstances. In other words, the Supreme Court of the United States is very much disposed to decide, and has decided many times, that when property comes to a full stop in a state, is kept there, and enjoys the protection of the laws of the state, that it becomes subject to taxation; that is to say, it must pay for the protection which it enjoys. We have recently had occasion to study that question in respect to tank cars brought into the state of Mississippi for the purpose of filling interstate orders, interstate contracts for oil, the car being unloaded on its arrival and immediately transmitted out of the state. In view of the fact that the shippers of such commodity ordinarily keeps an average number of cars within the state or always have some cars in the state, for such purpose, the Supreme Court of the United States holds that they are taxable, although such cars are instruments of interstate commerce. See case of *Union Refrigerator Transit Co. v. Lynch*, 177 U. S. 149, 44 L. ed. 708; *American Refrigerator Co. v Hall*, 174 U. S. 70, 43 L. ed. 899.

In the case of *Lemke v. Farmers' Grain Co.* 258 U. S. 50, 66 L. ed. 458, the supreme court of the United States definitely announced that in determining as to whether or not a given commodity was engaged in interstate commerce a somewhat different rule was applied in taxation cases. The court said:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between state and federal authority under facts presented which require a definition of interstate commerce where the right of taxation was involved, or manufacture,

or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier, or otherwise, thus passing beyond authority into the domain of federal control. Cases of that type are not in conflict with principles recognized as controlling here."

Other cases directly in point are the following: *Robbins v. Taxing District*, 120 U. S. 489, 30 L. ed. 694; *Ozark Pipe Line Co. v. Lanier*, 266 U. S. 555, 69 L. ed. 439; *Thornton v. United States* 271 U. S. 414, 70 L. ed. 1013; *Davis v. Farmers' Cooperative Equity Co.*, 262 U. S. 66, 67 L. ed. 996; *Spalding & Brothers v. Edwards*, 262 U. S. 66, 67 L. ed. 865; *Hammer v. Dagenhart*, 247 U. S. 251, 62 L. ed. 1101; *United States v. Hill*, 248 U. S. 420, 67 L. ed. 337; *Blumingstock Bros. v. Curtis Pub. Co.* 252 U. S. 436, 64 L. ed. 649; *Weeks v. United States*, 245 U. S. 618, 62 L. ed. 513.

In the case of *Brooks v. U. S.* 267 U. S. 432, 69 L. ed. 699, this court held that the driving of a stolen automobile from one state into another was interstate commerce.

In the case of *Fulton v. U. S.* 271 U. S. 414, 70 L. ed. 1013, the court held that the driving of cattle from one state into another was interstate commerce.

In the case of *Real Silk Hosiery Mills v. Portland*, 268 U. S. 325, 69 L. ed. 982, this court held that a state statute requiring persons going from place to place soliciting orders for merchandise to be shipped from out the state violated the commerce clause of the constitution. The court used the following language:

"By a bill filed in the United States District Court for Oregon appellant challenged the ordinance and asked that its enforcement be restrained upon the ground, among others, that it interferes with

and burdens interstate commerce and is repugnant to article 1, sec. 8, Federal Constitution. The trial court upheld the enactment and sustained a motion to dismiss the bill. This was affirmed by the circuit court of appeals, 297 Fed. 897.

"Considering former opinions of this court we cannot doubt that the ordinance materially burdens interstate commerce and conflicts with the commerce clause. *Robbins v. Taxing Dist.* 120 U. S. 489, 497, 30 L. ed. 694, 697, 1 Inters. Com. Rep. 45, 7 Sup. Ct. Rep. 592; *Brennan v. Titusville,* 153 U. S. 289, 38 L. ed. 719, 4 Inters. Com. Rep. 658, 14 Sup. Ct. Rep. 829; *Rearick v. Pennsylvania,* 203 U. S. 507, 51 L. ed. 295, 27 Sup. Ct. Rep. 159; *Crenshaw v. Arkansas,* 227 U. S. 389, 57 L. ed. 565, 33 Sup. Ct. Rep. 294; *Texas Transport & Terminal Co. v. New Orleans,* 264 U. S. 150, 68 L. ed. 611, 34 A. L. R. 907, 44 Sup. Ct. Rep. 242; *Alpha Portland Cement Co. v. Massachusetts,* 267 U. S. 203, ante, 916, 45 Sup. Ct. Rep. 477 (May 4, 1925).

"The negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce.' Manifestly, no license fee could have been required of appellant's solicitors if they had traveled at its expense and received their compensation by direct remittances from it. And we are unable to see that the burden on interstate commerce is different or less because they are paid through retention of advance partial payments made under definite contracts negotiated by them. Nor can we accept the theory that an expressed purpose to prevent possible frauds is enough to justify legislation which really interferes with the free flow of legitimate interstate commerce. See *Shafer v. Farmers Grain Co.,* 268 U. S. 189, ante, 909, 49 Sup. Ct. Rep. 481 (May 4, 1925)."

In *Federal Trade Commission v. Paper Trade Association*, 273 U. S. 52, 71 L. ed. 534, the court used the following language:

"Paragraph (c) applies only to mill shipments from one state to another. For the consummation of a transaction involving such a shipment, two contracts are made. The first is for sale and delivery by wholesaler to retailer in the same state. The seller is free to have delivery made from any source within or without the state. The price charged is that fixed by the local association. The other contract is between the wholesaler and the manufacturer in different states. There is no contractual relation between the manufacturer and retailer. By the shipment of the paper from a mill outside the state to or for the retailer, the wholesaler's part of the first contract is performed. The question is whether the sale by the wholesaler to the retailer in the same state is a part of interstate commerce where, subsequently at the instance of the seller and to perform his part of the contract, the paper is shipped from a mill in anoher state to or for the retailer. 'Commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business.' *Swift & Co. v. United States*, 196 U. S. 375, 398, 49 L. ed. 518, 525, 25 Sup. Ct. Rep. 276. And what is or not interstate commerce is to be determined upon a broad consideration of the substance of the whole transaction. *Dozier v. Alabama*, 218 U. S. 124, 128, 54 L. ed. 965, 967, 28 L. R. A. (N. S.) 264, 30 Sup. Ct. Rep. 649. Such commerce is not confined to transportation, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. And it includes the buying and selling of commodities for shipment from one state to another. *Dahnke-Walker Mill co. v. Bondurant*, 257 U. S. 282, 290, 66 L. ed. 239, 243, 42 Sup. Ct. Rep. 106; *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 66 L. ed. 458, 462, 42 Sup. Ct.

Rep. 244. The absence of contractual relation between the manufacturer and retailer does not matter. The sale by the wholesaler to the retailer is the initial step in the business completed by the interstate transportation and delivery of the paper. Presumably the seller has then determined whether his source of supply is a mill within or one without the state. If the contract of sale provided for shipment to the purchaser from a mill outside the state, then undoubtedly it would be an essential part of commerce among the states. *Sonneborn Bros. v. Cureton* (*Sonneborn Bros. v. Keeling*), 262 U. S. 506, 515, 67 L. ed. 1095, 1100, 43 Sup. Ct. Rep. 643. Clearly the absence of such a provision does not affect the substance of the matter when in fact such a shipment was contemplated and made. Cf. *Dozier v. Alabama*, supra; *Western U. Telg. Co. v. Foster*, 247 U. S. 105, 113, 62 L. ed. 1006, 1015, 1 A. L. R. 1278, P. U. R. 1918D, 865, 38 Sup. Ct. Rep. 438; *Lemke v. Farmers Grain Co.*, supra, 55 (66 L. ed. 462, 42 Sup. Ct. Rep. 244). The election of the seller to have the shipment made from a mill outside the state makes the transaction one in commerce among the states. And on these facts the sale by jobber to retailer is a part of that commerce."

In *International Textbook Co. v. Pigg*, 217 U. S. 91, 54 L. ed. 678, the court used the following language:

"The same thought was expresed in *Western U. Tel. Co. v. Pendleton*, 122 U. S. 347, 356, 30 L. ed. 1187, 1188, 1 Inters. Com. Rep. 306, 307, 7 Sup. Ct. Rep. 1126, 1127, where the court said: 'Other commerce deals only with persons, or with visible and tangible things. But the telegraph transports nothing visible and tangible; it carries only *ideas, wishes, orders,* and *intelligence.*' It was said in the circuit court of appeals for the eighth circuit, speaking by Judge Sanborn in *Butler Bros. Shoe Co. v. United States Rubber Co.*, 84 C. C. A. 167, 183, 156 Fed 1, 17, that

'all interstate commerce is not sales of goods. Importation into one state from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade, and dealing between citizens of different states, which contemplates and causes such importation, whether it be of goods, persons or *information*, is a transaction of interstate commerce.' "

We respectfully submit that the contracts involved in these cases, whereby the complainant, Foster-Fountain Packing Co., obligated itself to transport from Louisiana into the State of Mississippi, to the Sea Food Company of Mississippi, shrimp, and the contract whereby the Sea Food Company of Louisiana, in like manner, contracted to transport oysters to L. O. Johnson, Jr., are each contracts in interstate commerce, are protected by the commerce clause, and the acts are void as applied thereto as an interference with interstate commerce.

The case of *Binderup v. Pathe Exchange*, 263 U. S. 291, 68 L. ed. 308, is directly in point. In that case the complainant was engaged in the business of distributing moving picture films to various portions of the United States for use in moving picture shows. He would purchase these films from corporations belonging to what is known as the Pathe Exchange. The members entered into a combination to ruin the business of the plaintiff in error, and undertook to make same effective by agreeing one with the other that they would have no further business relations with the plaintiff in error. Deeming their combination in violation of the anti-trust act, he filed suit for damage, and was met in the lower court with the point that because the films forming the subject-matter of his business were not actually moving in interstate commerce, the anti-trust act of Congress was not involved. This court again announced the rule that interstate commerce included not only the transportation of property, but negotiations and contracts incidental thereto. The court used the following language:

"The film contracts were between residents of different states, and contemplated the leasing by one to the other of a commodity manufactured in one state and transported and to be transported to and used in another. The business of the distributors, of which the arrangement with the exhibitor here was an incident, was clearly interstate. It consisted of manufacturing the commodity in one state, finding the customer for it in other states, making contracts of lease with them, and transporting the commodityleased from the state of manufacture into the state of the lessees. If the commodity were consigned directly to the lessees, the interstate character of the commerce throughout would not be disputed. Does the circumstance that, in the course of the process, the commodity is consigned to a local agency of the distributors, to be by that agency held until delivery to the lessees in the same state, put an end to the interstate character of the transaction and transform it into one purely intrastate? We think not. The intermediate delivery to the agency did not end, and was not intended to end, the movement of the commodity. It was merely halted as a convenient step in the process of getting it to its final destination. The general rule is that where transportation has acquired an interstate character, 'it continues at least until the load reaches the point where the parties originally intended that the movement should finally end.' *Illinois C. R. Co. v. De Fuentes,* 236 U. S. 157, 163, 59 L. ed. 517, 519; P. U. R. 1915A, 840, 35 Sup. Ct. Rep. 275. And see *Western U. Telg. Co. v. Foster,* 247 U. S. 105, 113, 62 L. ed. 1006, 1015, 1 A. L. R. 1278, P. U. R. 1918D, 865, 38 Sup. Ct. Rep. 438; *Western Oil Ref. Co. v. Lipscomb,* 244 U. S. 346, 349, 61 L. ed. 1181, 1183, 37 Sup. Ct. Rep. 623.

"In *Swift & Co. v. U. S.,* 196 U. S. 375, 398, 49 L. ed. 518, 525, 25 Sup. Ct. Rep. 276, it was held that where cattle were sent for sale from a place

in one state, with the expectation that the transit would end after purchase in another state, the only interruption being that necessary to rind a purchaser at the stockyards, and this was a typical, constantly recurring course, the whole transaction was one in interstate commerce and the purchase a part and incident of it. It further appeared in that case that Swift & Co. were also engaged in shipping fresh meats to their respective agents at the principal markets in other cities, for sale by such agents in those markets to dealers and consumers; and these sales were held to be part of the interstate transaction upon the ground 'that the same things which are sent to agents are sold by them and * * * some, at least, of the sales, are of the original packages. Moreover, the sales are by persons in one state to persons in another.' In the same case in the court below (122 Fed. 529, 533), upon this branch of the case, it is said:

"'I think the same is true of meat sent to agents, and sold from their stores. The transaction, in such case, in reality, is between the purchaser and the agents' principal. The agents represent the principal at the place where the exchange takes place; but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business.'

"The most recent expression of this court is in *Stafford v. Wallace*, 258 U. S. 459, 516, 66 L. ed. 735, 741, 23 A. L. R. 229, 42 Sup. Ct. Rep. 397, where after describing the process by which the live stock are transported to the stockyards, and thence to the purchasers, it is said: 'Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character. The commission men are essential in making the sales, without which the flow of current would be obstructed, and this, whether they are made to packers or

dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interest in the subject of the current not interferring with but, on the contrary, being indispensable to its continuity.' The transactions here are essentially the same as those involved in the foregoing cases, substituting the word 'film' for the word 'livestock,' or 'cattle' or 'meat.' Whatever difference exists is of degree, and not in character.

"The cases cited by defendants in error upholding state taxation as not constituting an interference with interstate commerce, are of little value to the inquiry here. It does not follow that, because a thing is subject to state taxation, it is also immune Federal regulations under the commerce clause. *Stafford v. Wallace*, supra, pp. 525-527; *Addyston Pipe & Steel Co. v. U. S.* 175 U. S. 211, 245, 44 L. ed. 136, 149, 20 Sup. Ct. Rep. 96.

"The distributors according to the allegations of the complaint, control the distribution of all films in the United States, and the exhibitor could not procure them from others. The direct result of the alleged conspiracy and combination not to sell to the exhibitor, therefore, was to put an end to his participation in that business. Interstate commerce includes the interstate purchase, sale, lease, and exchange of commodities, and any combination or conspiracy which unreasonably restrains such purchase, sale, lease, or exchange is within the terms of the anti-trust act, denouncing as illegal every contract, combination, or conspiracy 'in restraint in trade or commerce among the several states.' The allegation of the complaint is that the exhibitor has been procuring films from some of the distributors, but has refused to buy from others, who thereupon in-

duced the former to cease dealing with him, and that all then combined and conspired, in restraint of interstate trade and commerce, to prevent him from carrying on his business; that they have ever since refused to furnish him with film service, and have caused unexpired contracts which he held with some of them to be illegally cancelled. It is difficult to imagine how interstate trade could be more effectively restrained than by suppressing it, and that, in effect, so far as the exhibitor is concerned, is what the distributors in combination are charged with doing and intending to do. It is doubtless true that each of these distributors, acting separately, could have refused to furnish films to the exhibitor without becoming amenable to the provisions of the act; but here it is alleged that they combined and conspired together to prevent him from leasing from any of them. The illegality consists, not in the separate action of each, but in the conspiracy and combination of all, to prevent any of them from dealing with the exhibitor. See *U. S. v. Schrader's Son*, 252 U. S. 85, 99, 64 L. ed. 471, 475, 40 Sup. Ct. Rep. 251; *Bobbs-Merrill Co. v. Straus*, 139 Fed. 155, 191. The contracts with these distributors contemplated and provided for transactions in interstate commerce. The business which was done under the leasing, transportation, and delivery of films—was interstate commerce. The alleged purpose and direct effect of this combination and conspiracy were to put an end to these contracts and future business of the same character, and 'restrict, in that regard, the liberty of a trader to engage in business.' (*Loew v. Lawlor*, 208 U. S. 274, 293, 52 L. ed. 488, 496, 28 Sup. Ct. Rep. 301, 13 Ann. Cas. 815), and, as a necessary corollary, to restrain interstate trade and commerce, in violation of the anti-trust act."

We desire to lay emphasis on the language used in that case as to what involved interference with interstate commerce. Your Honors used the following language:

"It is difficult to imagine how interstate trade could be more effectively restrained than by suppressing it, and that, in effect, so far as the exhibitor is concerned, is what the distributors in combination are charged with doing and intending to do."

THIS COURT WILL INVESTIGATE THE RECORD AND DETERMINE FOR ITSELF AS TO WHETHER OR NOT APPELLANTS HAVE BEEN DEPRIVED OF A CONSTITUTIONAL RIGHT.

In the case of *Interstate Amusement Company v. Albert*, 239 U. S. 560, 60 L. ed. 439, the court used the following language:

"It is settled that such findings of fact, in ordinary cases than those arising under the 'contract clause' of the constitution, are binding upon this court. *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86, 97, 53 L. ed. 417, 424, 29 Sup. Ct. Rep. 220; *Rankin v. Emigh*, 218 U. S. 27, 32, 54 L. ed. 915, 920, 30 Sup. Ct. Rep. 672; *Mledreich v. Lauenstein*, 232 U. S. 236, 243, 58 L. ed. 584, 389, 34 Sup. Ct. Rep. 309. But the rule has its exceptions, as, for instance, where there is ground for the insistence that a federal right has been denied as the result of a finding that is without support in the evidence. *Southern P. Co. v. Schuyler*, 227 U. S. 601, 611, 57 L. ed. 662, 669, 43 L. R. A. (N. S.) 901, 33 Sup. Ct. Rep. 277; *North Carolina R. Co. v. Zachary*, 232 U. S. 248, 259, 58 L. ed. 591, 595, 34 Sup. Ct. Rep. 305, Ann. Cas. 1914C, 159; *Carlson v. Washington*, 234 U. S. 103, 106, 58 L. ed. 1237, 1238, 34 Sup. Ct. Rep. 717."

In the case of *Truax v. Corrigan*, 257 U. S. 312, 66 L ed. 254, the court used the following language:

"The facts alleged are admitted by the demurrer, and, in determining their legal effect as a deprivation of plaintiffs' legal rights under the 14th

Amendment, we are at as full liberty to consider them as was the state supreme court. *Mackay v. Dillon*, 4 How. 431, 11 L. ed. 1046; *Dower v. Richards*, 151 U. S. 658, 667, 38 L. ed. 308, 14 Sup. Ct. Rep. 452, 17 Mor. Min. Rep. 704. Nor does the court's declaration that the statute is a rule of evidence bind us in such an investigation. *Bailey v. Alabama*, 219 U. S. 219, 238, 55 L. ed. 191, 200, 31 Sup. Ct. Rep. 145; *Chicago M. & St. P. R. Co. v. Minnesota*, 134 U. S. 418, 33 L. ed. 970, 3 Inters. Com. Rep. 209, 10 Sup. Ct. Rep. 462, 702; *Mugler v. Kansas*, 123 U. S. 623, 661, 31 L. ed. 205, 210, 8 Sup. Ct. Rep. 273; *Corn Products Ref. Co. v. Eddy*, 249 U. S. 427, 432, 63 L. ed. 687, 693, 39 Sup. Ct. Rep. 325. In cases brought to this court from state courts for review, on the ground that a Federal right set up in the state court has been wrongly denied, and in which the state court has put its decision on a finding that the asserted Federal right has no basis in point of fact, or has been waived or lost, this court, as an incident of its power to determine whether a Federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to present a review here. *Kansas City Southern R. C. v. H. Albers Commission Co.*, 223 U. S. 573, 591, 593, 56 L. ed. 556, 565, 32 Sup. Ct. Rep. 316; *Cedar Rapids Gaslight Co. v. Cedar Rapids*, 223 U. S. 655, 668, 669, 56 L. ed. 594, 604, 32 Sup. Ct. Rep. 389; *Southern P. Co. v. Schuyler*, 227 U. S. 601, 611, 57 L. ed. 662, 669, 43 L. R. A. (N. S.) 901, 33 Sup. Ct. Rep. 277. Another class of cases in which this court will review the finding of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question, to analyze the facts. *Northern P. R. Co. v. North Dakota*, 236 U. S. 585, 593, 59 L. ed. 735, 740, L. R. A. 1917F, 1148 P. U. R.

1915C, 277, 35 Sup. Ct. Rep. 429, Ann. Cas. 1916A, 1; *Jones Nat. Bank v. Yates,* 240 U. S. 541, 552, 553, 60 L. ed. 788, 797, 36 Sup. Ct. Rep. 429. In view of these decisions and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail in the pleadings and are admitted by demurrer, violates the Federal Constitution, this court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the state supreme court in this regard. The only respect in such a case in which this court is bound by the judgment of the state supreme court is in the construction which that court puts upon the statute."

In the case of *A. & V. Ry. Co. v. J. & E. Ry. Co.* 271 U. S. 244, 70 L. ed. 928, the court used the following language:

"It is true that in this case the state court found that the place selected for the junction was a proper one. But the power to make the determination whether state action will obstruct interstate commerce inheres in the United States as an incident of its power to regulate such commerce."

In the case of *K. C. Structural Steel Co. v. State of Arkansas,* 269 U. S. 148, 70 L. ed. 204, the court used the following language:

"The supreme court of Arkansas held that the things done by plaintiff in error before August 17, 1921, constituted intrastate business in Arkansas. But the plaintiff in error contends that all was interstate commerce. We accept the decision of the supreme court of Arkansas as to what constitutes the doing of business in that state within the meaning of its own laws. *Georgia v. Chattanooga,* 264

U. S. 472, 483, 68 L. ed. 796, 800, 44 Sup. Ct. Rep. 369. But this court will determine for itself whether what was done by plaintiff in error was interstate commerce and whether the state enactments as applied are repugnant to the commerce clause. Plaintiff in error cites *Dahnke-Walker Mill v. Bondurant*, 257 U. S. 282, 66 L. ed. 239, 42 Sup. Ct. Rep. 106. It was there held that, 'Such commerce (among the states) is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse.' (p. 290); and that, 'A corporation of one State may go into another, without obtaining the leave or license of the latter, for all the legitimate purposes of such commerce; and any statute of the latter state which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause' (p. 291). In that case, a Tennessee corporation, in pursuance of its practice of purchasing grain in Kentucky to be transported to and used in its Tennessee mill, made a contract for the purpose of wheat to be delivered in Kentucky on the cars of a public carrier, intending to forward it as soon as delivery was made. It was held that the transaction was interstate commerce, notwithstanding the contract was made and was to be performed in Kentucky. All the things done in Kentucky had reference to and were included in the interstate transaction."

In *LaCoste v. Department of Conservation*, 263 U. S. 545, 68 L. ed. 437, this court used the following language:

"This court will determine for itself what is the necessary operation and effect of a state law challenged on the ground that it interferes with or burdens interstate commerce. The name, description or characterization given it by the legislature or the courts of the state will not necessarily con-

trol. Regard must be had to the substance of the measure rather than its form. *Looney v. Crane Co.* 245 U. S. 178, 189, et seq., 62 L. ed. 230, 235, 38 Sup. Ct. Rep. 85; *Kansas City Ft. S. & M. R. Co. v. Botkin,* 240 U. S. 227, 60 L. ed. 617, 36 Sup. Ct. Rep. 261; *St. Louis Southwestern R. Co. v. Arkansas,* 235 U. S. 350, 362, 59 L. ed. 265, 271, 35 Sup. Ct. Rep. 99; *United States Exp. Co. v. Minnesota,* 223 U. S. 335, 346, 56 L. ed. 459, 465, 32 Sup. Ct. Rep. 211; *Galveston H. & S. A. R. Co. v. Texas,* 210 U. S. 217, 227, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638."

POINT II

SECTIONS 4 AND 13 OF THE "SHRIMP ACT" AND SECTIONS 2 AND 3 OF THE "OYSTER ACT" VIOLATE THE 14th AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES IN THAT PLAINTIFFS IN ERROR ARE DEPRIVED OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

The acts of the state of Louisiana violate the 14th Amendment to the Constitution of the United States for the reason that the Foster Fountain Packing Co. is prohibited from acquiring and selling in interstate commerce shrimp, and the Sea Food Company of Mississippi is denied the right to purchase the same. The Sea Food Company of Louisiana is denied the right to purchase and sell in interstate commerce oysters, and L. O. Johnson, Jr., is denied the right to purchase the same, unless the vendor corporations shall acquire and operate factories or drying plants in the state of Louisiana, thereby depriving each of them of their property without due process of law.

The right to contract is property, and is protected by the fourteenth amendment to the constitution of the United States. *Truax v. Corrigan*, 257 U. S. 312, 66 L. ed. 205.

The right of property includes the right to acquire, use, and dispose of it *Buchannan v. Worley*, 245 U. S. 861, 62 L. ed. 149.

The right to contract is property, protected by the fourteenth amendment to the constitution of the United States. *St. Louis Cotton Compress Company v. Arkansas*, 260 U. S. 346, 67 L. ed. 297.

A statute can not regulate arbitrarily a material to be used in the manufacture of beds. *Weaver v. Palmer*, 270 U. S. 402, 70 L. ed. 654.

In the case of *Charles Wolf v. Court of Industrial Relations*, 262 U. S. 522, 67 L. ed. 1103, an act regulating wages to be paid by an employer was held to be unconstitutional, as interfering with the right of contract.

To the same effect was *Meyer v. Nebraska*, 262 U. S. 390, 67 L. ed. 1042. *Adkins v. Childrens Hospital*, 261 U. S. 525, 67 L. ed. 785.

A state statute which requires a person operating motor busses, under contract of carriage with one person, is denied the equality of the law in being required to become a public carrier and transport for all persons. *Frost v. Railroad Commission*, 271 U. S. 583, 70 L. ed. 1101.

In the case of *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86, 53 L. ed. 417, the court used the following language:

> "*National Cotton Oil Co. v. Texas*, 197 U. S. 115, 49 L. ed. 689, 25 Sup. Ct. Rep. 379; *Smiley v. Kansas*, 196 U. S. 447, 49 L. ed. 546, 25 Sup. Ct. Rep. 289. Having the power to pass laws of this character, of course, the state may provide for proceedings to enforce the same. The state, keeping within constitutional limitations, may provide its own method of procedure and determine the methods and means by which such laws may be made effectual. 'The limit of the full control which the state has in the proceedings of its courts, both in civil and criminal cases, is subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable

provisions of the Federal constitution.' *West v. Louisiana*, 194 U. S. 258, 263, 48 L. ed. 965, 969, 24 Sup. Ct. Rep. 650; and see *Davis v. Texas*, 139 U. S. 651, 35 L. ed. 300, 11 Sup. Ct. Rep. 675; *Brown v. New Jersey*, 175 U. S. 172, 175, 44 L. ed. 119, 120, 20 Sup. Ct. Rep. 77; *Allen v. Georgia*, 166 U. S. 138, 140, 41 L. ed. 949, 950, 17 Sup. Ct. Rep. 525; Re Converse, 137 U. S. 624, 632, 34 L. ed. 796, 799, 11 Sup. Ct. Rep. 191; and *Twining v. New Jersey*, 211 U. S. 78, ante, 97, 29 Sup. Ct. Rep. 14, decided at this term of court, where the subject is fully discussed, and previous cases in this court cited."

Other cases directly in point are *Smith v. Texas*, 233 U. S. 630, 58 L. ed. 1129; *Adams v. Tanner*, 244 U. S. 590, 61 L. ed. 133; *New York Life Ins. Co. v. Dodge*, 246 U. S. 357, 62 L. ed. 772.

Jay Burns Baking Co. v. Bryan, Gov. of Negraska, 264 U. S. 504, 68 L. ed. 813, holds that a state may not, in the guise of protection of the public, arbitrarily interfere with private business or impose unreasonable, unnecessary restrictions upon them.

(Page 826): "Undoubtedly the police power of the state may be exerted to protect purchasers from imposition by sale of shortweight loaves. *Schmidinger v. Chicago*, 226 U. S. 578, 588, 67 L. ed. 364, 368, 33 Sup. Ct. Rep. 182, Ann. Cas. 1914B, 284. Many laws have been passed for that purpose. But a state may not, under the guise of protecting the public, arbitrarily interfere with private business, or prohibit lawful occupations, or impose unreasonable and unnecessary restrictions upon them. *Lawton v. Steele*, 152 U. S. 137, 38 L. ed. 385, 388, 14 Sup. Ct. Rep. 499; *Meyer v. Nebraska*, 262 U. S. 390, 399, 67 L. ed. 1042, 1045, 29 A. L. R. 1446, 43 Sup. Ct. Rep. 625. Constitutional protection having been

invoked, it is the duty of the court to determine whether the challenged provision has reasonable relation to the protection of purchasers of bread against fraud by short-weights, and really tends to accomplish the purpose for which it was enacted. *Meyer v. Nebraska*, supra; *Welch v. Swasey*, 214 U. S. 91, 105, 53 L. ed. 923, 29 Sup. Ct. Rep. 567; *Dobbins v. Los Angeles*, 195 U. S. 223, 236, 49 L. ed. 169, 175, 25 Sup. Ct. Rep. 18; *Connolly v. Sewer Pipe Co.* 184 U. S. 540, 556 46 L. ed. 679, 688, 22 Sup. Ct. Rep. 431; *Lawton v. Steele*, supra."

POINT III

SECTION 4 OF THE "SHRIMP ACT" AND SECTION 2 OF THE "OYSTER ACT" VIOLATE THE 14th AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES IN THAT THEY DENY TO THE COMPLAINANT IN ERROR THE EQUAL PROTECTION OF THE LAW, IF SUCH SECTIONS SHALL BE CONSTRUED SO AS TO PROHIBIT THE SEA FOOD COMPANY OF LOUISIANA AND THE FOSTER FOUNTAIN PACKING CO., INC., OF LOUISIANA, FROM CATCHING FISH OR TAKING OYSTERS FROM THE PUBLIC REEFS IN THE STATE OF LOUISIANA, IN THAT SUCH CONSTRUCTION WOULD DEPRIVE THEM OF THE EQUAL PROTECTION OF THE LAW.

It is not perfectly clear to us as to whether or not opposing counsel contend that the legislature of the state of Louisiana can give to the resident of a state the right without limit as to quantities, during the open season, to catch shrimp from the public waters within three miles of the shore, and to take oysters from the public reefs. We rather gathered from the arguments of counsel at the hearing that no distinction was made between an individual resident and a corporation organized under the laws of the state. We respectfully submit, however, that no such distinction could be justified. As to an individual the act does not require that the resident shall have lived in the state for any length of time. These vendor corporations are residents of the state of Louisiana; they are organized and chartered under the laws of the state of Louisiana; their charters expressly conferring upon them that power, to catch and import fish. We respectfully submit that these corporations are persons within the meaning of the 14th Amendment to the Constitution of the United States providing equal protection of the law. *Southern R. R. Co. v. Greene,* 216

U. S. 400, 54 L. Ed. 536; *Santa Clara County v. Sou. &c. R. Co.* 118 U. S. 394, 30 L. ed. 118, *Pembina Consol. Silv. Min. Co. v. Penn.* 125 U. S. 181 31 L. ed. 650; *Charlotte &c. R. Co. v. Gibbons,* 142 U. S. 386, 35 L. ed. 1051; *Covington &c. Tpk. Road Co. v. Sandford,* 164 U. S. 578, 41 L. ed. 560; *Gulf R. Co. v. Ellis,* 165 U. S. 150; *Smyth v. Ames,* 169 U. S. 466, 42 L. ed. 819.

Dealing with the question of the title of the state to these natural resources, it holds the same as trustee for the people of the state, which trust must be administered without discrimination.

In *Gratz v. McKenzie,* 258 Fed. 338, (Eighth Circuit Court of Appeal) Mr. Justice Garland, as organ of the court, said:

> "Fish, generally speaking, on account of their migratory character and for want of a fixed habitat, are classified as animal ferrae naturae. Their ownership, while they are in a state of freedom is in the State, *not as proprietor, but in its sovereign capacity as the representative and for the benefit of all its people in common and the ownership may not be claimed by any particular individuals.* 11 R. C. L. 1015; *State v. Heger,* 194 Mo. 711; *State v. Weber,* 205 Mo. 36; 10 L. R. A. (N.S.) 1155.
>
> "The difference in the locomotive powers of swimming fish and shell fish, however, justifies a distinction as to their ownership. *In their natural state, shell fish, like swimming fish, are classified as ferrae naturae, and their ownership is vested in the state in its sovereign capacity.* 19 Cyc. 988 B; Vol. 11, R. C. L. page 1017.
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> "*Oysters and clams which are planted where they do not naturally grow and the location of which is marked by posts or otherwise, are the subject of private ownership.* R. C. L. Vol. 11, page 1018."

As said by this honorable Court in *McCready v. Virginia*, 94 U. S. 394:

> "The planting of oysters in the soil covered by water owned in common by the people of the state is not different in principle than from that of planting corn upon dry land held in the same way. Both are for the purpose of cultivation and profits; and if the state, in the regulation of its public domain, can grant to its own citizens exclusive use of dry lands, we see no reason why it may not do the same thing in respect to such as are covered by water, and as all concede that a state may grant to one of its citizens the exclusive use of a part of the common property, the conclusion would seem to follow that it might by appropriate legislation confine the use of the whole to its own people alone."

In *Smith v. Maryland*, 18 How. 71, Mr. Chief Justice Curtis, on page 74, said:

> "Whatever soil below low water mark is the subject of exclusive propriety and ownership belongs to the state, on whose maritime border, and within whose territory it lies. * * * * *But the soil is held by the state, not only subject to, but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shell as floating fish.* * * * The state holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public rights less valuable, or destroy it altogether. This power results from the ownership of the soil, from the legislative jurisdiction over it, and from its duty to preserve unimpaired those public uses for which the soil is held.

"The law now in question is of this character. Its avowed, and unquestionably its real object is to prevent the destruction of oysters within the waters of the state, by the use of particular instruments in taking them. *It does not touch the subject of the common liberty of taking oysters, save for the* purpose of guarding them from injury to whomsoever they may belong, and by whomsoever they may be enjoyed. *Whether this liberty belongs exclusively to the citizens of the state of Maryland, or may lawfully be enjoyed in common by all the citizens of the United States; whether this public use may be restricted by the state to its own citizens, or a part of them, or by force of the constitution of the United States, must remain common to all citizens of the United States; whether the national government by a treaty or act of congress can grant to foreigners the right to participate therein, or what in general are the limits of the trust upon which the state holds this soil, or its power to define and control that trust,* are matters wholly without the scope of this case, and upon which we give no opinion."

No reasonable classification could be predicated based upon a distinction between a resident and a domestic corporation, which would justify attaching to the condition of taking fish on the part of the corporation, that it operate a plant in the state. The resident is permitted, without operating the plant, to catch the fish and take the oysters without limit as to quantity, and/or number. The domestic corporation is denied the right to participate in the distribution of the public domain except on most onerous conditions. The erection and operation of a drying or canning plant would have no relation whatever to the conservation of the natural resources, because it would necessarily be contemplated that an individual or a corporation owning the drying plant or canning factory would contemplate not keeping the commodity within the state but shipping them out. Therefore, the distinc-

tion has no relation in any true sense of the legitimate exercise of the police power of the state. We submit to the Court the following authorities upon that proposition.

In the case of *Royster Guano Co. v. Virginia*, 253 U. S. 412, 64 L. ed. 989, it appeared that the state of Virginia had an act exempting domestic corporations from an income tax where all of their business was carried on outside of the state, imposing liability, however, upon domestic corporations doing business both within and without the state upon the income of such corporations, whether derived from within or without the state. The Supreme Court of the United States used the following language:

> "It is unnecessary to say that the 'equal protection of the laws' required by the 14th Amendment does not prevent the states from resorting to classification for the purpose of legislation. Numerous and familiar divisions of this court establish that they have a wide range of discretion in that regard. But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. The latitude of discretion is notably wide in the classification of property for purposes of taxation and the granting of partial or total exemptions upon grounds of policy. *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 237, 33 L. ed. 892, 895, 10 Sup. Ct. Rep. 533; *Michigan C. R. Co. v. Powers*, 201 U. S. 293, 50 L. ed. 744, 761, 25 Sup. Ct. Rep. 459; *Keeney v. New York*, 222 U. S. 525, 536, 56 L. ed. 299, 38 L. R. A. (N.S) 1139, 32 Sup. Ct. Rep. 105; *Citizens Teleph. Co. v. Fuller*, 229 U. S. 322, 329, 57 L. ed. 1206, 1213, 23 Sup. Ct. Rep. 833; *Northwestern Mut. L. Ins. Co. v. Wisconsin*, 247 U. S. 132, 139, 62 L.

ed. 1025, 1037, 38 Sup. Ct. Rep. 444; Nevertheless, a discriminatory tax law can not be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory. Now, both of the taxing provisions here in question relate to corporations organized under the laws of Virginia. It is the object of Chapter 495 to exempt such corporations from income taxes (as well as taxes upon intangible property) where they do no business within the state except holding their stockholders' meetings therein; manifestly, in recognition of the fact that Virginia corporations so circumstanced derive no governmental protection from the state warranting the imposition of taxes upon their incomes derived without the state, or property taxes upon their intangibles, and in recognition of the impolicy, if not injustice, of imposing such taxes upon them while they are liable, and presumably subjected, to taxation in the state or states where their income-producing business is conducted. But no ground is suggested, nor can we conceive of any. sustaining this exemption, which does not apply with equal or greater force as a ground for exempting from taxation the income of Virginia corporations derived from sources without the state where they also transact income producing business within the state. Corporations of this class derive no more protection from the state of their origin with respect to their outside business, and are no less subject to taxation by the states in which such business is conducted, than corporations of the other classes; and they are required to comply with the same laws as to the payment of organization taxes and annual registration fees and franchise taxes to the state of origin. Their business done within the state presumably is of some general benefit to the state, certainly enriches its treasury by the amount of the taxes paid upon the income derived therefrom; and the imposition upon them

under Chapter 472 of taxes not only upon this income, but also upon income that they derive from business conducted outside of the state (similar income of the favored corporations being exempted), has the effect of discriminating against them for that which ought to operate, if at all, in their favor. It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that it is arbitrary in effect; and none the less because it is probable that the unequal operation of the taxing system was due to inadvertence rather than design."

In the case of *Gulf, Colorado & Santa Fe R. R. Co. v. W. H. Ellis*, 165 U. S. 150, 41 L. ed. 666, the legislature of the state of Texas passed an act imposing on railroads, for failure to pay certain classes of claims which did not exceed fifty dollars, a reasonable attorney's fees to be added to the judgment rendered in favor of the plaintiff. In the above named case, suit was brought against the railroad company for killing live stock. Recovery was had for the value of the live stock, as well as the attorney's fee. The attorney's fee was limited to $10.00 by the act. The railroad company pleaded that it was denied the equal protection of the laws under the 14th Amendment to the Constitution of the United States. The Supreme Court of the United States reversed the case, using the following language:

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the 14th Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court in *Yick Wo v. Hopkins*, 118 U. S. 356, 369 (30: 320, 326): 'When we consider the nature and the theory of our institutions of government, the principles upon

which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal—that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision, as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and letter of which the former is the thought and spirit, and it is always safe to read the letter of the constitution in the spirit of the declaration of independence. No duty rests more imperatively upon the courts than the enforcement of these constitutional provisions intended to secure that equality of rights which is the foundation of free government. * *

"It must not be understood that by citing we endorse all of these decisions. Our purpose is rather to show the extent to which the courts of the various states have gone in enforcing the constitutional obligation of equal protection. Other cases of a similar character may be found in the reports, but a mere accumulation of authorities is of little value. It is apparent that the mere fact of classification is not sufficient to relieve the statute from the reach of the equality clause of the 14th Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable grounds—some difference which bears a just and proper relation to the attempted classification.

Tested by these principles, the statute in controversy cannot be sustained. The judgment of the Supreme Court of Texas is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion."

In the case of *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. ed. 220 the City of San Francisco passed an ordinance prohibiting the carrying on and operating of a laundry in framed buildings, except with the consent and permission of the local officer. The plaintiff in error and fellow countrymen, subjects of the Emperor of China, who had carried on their business for many years in the City, and desired to continue the same, though the permission was accorded to persons of other nationality were denied the permission. The plaintiff in error appealed to the courts, asserting rights under the 14th Amendment to the Constitution of the United States, the equal protection of the law. The Supreme Court of the United States held that in the administration of the law the rights of the plaintiff in error were denied, reversed the case, and used the following language:

"When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in

many cases of mere administration, the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights of life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be a government of laws and not of men'. For the very idea that one may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself. * *

"This conclusion, and the reasoning on which it is based, are deductions from the face of the ordinance, as to its necessary tendency and ultimate actual operation. In the present case, we are not obligated to reason from the probable to the actual and pass, upon the validity of the ordinance complained of, as tried merely by the opportunities which their terms afford, or unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown to establish an administration directed to exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of

that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad benign provisions of the 14th Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as to practically make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. This principle of interpretation has been sanctioned by this court in *Henderson v. May, etc. of New York*, 92 U. S. 259 (Bk. 23 L. ed. 450) & *Ex Parte Va.* 100 U. S. 339 (Bk. 25 L. ed. 679); *Neal v. Delaware*, 103 U. S. 370 (Bk. 26 L. ed. 277); and *Soon Hing v. Crowley* (supra)

"The present cases, as shown by the facts disclosed in the record are within this class. It appears that both petitioners have complied with every requisite deemed by the law or by the public officers charged with its administration necessary for the protection of neighboring property from fire, or as a precaution against injury to the public health. No reason whatever, except the will of the supervisors, is assigned why they would not be permitted to carry on, in the accustomed manner, their harmless and useful occupation, upon which they depend for a livelihood. And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happened to be Chinese subjects eighty others, not Chinese subjects are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong,

and which in the eye of the law is not justified. The discrimination, therefore, is illegal, and the public administration which enforces it is a denia of the equal protection of the laws and a violation of the 14th Amendment to the Constitution of the United States. The imprisonment of the petitioners therefore is illegal, and they must be discharged."

In the case of *Charles U. Cotting v. Goddard, Attorney General*, 183 U. S. 79, 46 L. ed. 92, it appeared that the state of Kansas passed a statute limiting and regulating the charges to be made by a stockyard company without limiting the charges to be made by other similar corporations doing a similar business, and without reference to the character or value of the service rendered. The plaintiff in error, who was the proprietor of a stockyard, enjoined the enforcement of the statute on the ground that it denied him the equal protection of the law. The Supreme Court of the United States held that it was discriminating and deprived the plaintiff in error of the equal protection of the law, because the amount which the plaintiff in error was permitted to charge was smaller than other persons in the same line of business, and under similar circumstances, and rendering the same service, were permitted to charge, there being no reasonable basis of distinction or classification. The Supreme Court of the United States used the following language:

"But while recognizing to the fullest extent the impossibility of an imposition of duties and obligation mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when one or two parties engaged in the same kind of business and under the same conditions, burdens are cast which are not cast upon

the other. There can be no pretense that a stock-yard which receives ninety-nine head of cattle per day per year is not doing precisely the same business as one receiving one hundred and one head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra two head of cattle per day does not change the character of the business. If once the door is open to the affirmance of the proposition that a state may regulate one who does much business, while not regulating the other who does the same but less business, then all significance in the guaranty of the equal protection of the laws is lost, and the door is opened to inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results different individuals or corporations differently or with those in which a classification is based on inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of the business which each may do. If such legislation does not deny the equal protection of the laws we are unable to perceive what legislation would. We think therefore, that the principle of the decision of the Supreme Court of Kansas in *State v. Haun*, 61 Kan. 146, 47 L. R. A. 369, 59 Pac. 340, is not only sound, but is controlling in this case, and that the statute must be held unconstitutional as in conflict with the equal protection clause of the 14th Amendment."

In the case of *Thomas Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 46 L. ed. 679, it appeared that the State of Illinois passed a statute to prevent trusts and combines. The statute was general in its nature, but eliminated from its operative provisions persons

engaged in agricultural pursuits, live stock, artisans, etc. The equal protection of the law was pleaded, which defenses were denied by the state court, and on appeal to the Supreme Court of the United States it held the act was discriminatory against other persons similarly situated, held the Statutes of Illinois unconstitutional and affirmed the case, using the following language:

> "These principles applied to the case before us condemn the statute of Illinois. We have seen that under that statute all except producers of agricultural commodities, and raisers of live stock, who combine their capital, skill or acts for any of the purposes named in the act, may be punished as criminals, while agriculturists and live stock raisers, in respect of their products or live stock in hand, are exemoted from the operation of the statute, and may combine and do that which, if done by others, would be a crime against the State. The statute so provides notwithstanding persons engaged in trade, or in the sale of merchandise and commodities, within the limits of a State, and agriculturists and raisers of live stock, are all in the same general class, that is, they are alike engaged in domestic trade, which is, of right, open to all, subject to such regulations, applicable alike to all in like conditions, as the State may legally prescribe.
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> "The difficulty is not met by saying that, generally speaking, the State, when enacting laws, may, in its discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this Court has held that classifications 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily, and without any such basis. * * * *

But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government * * * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' *Gulf Coast & S. F. R. Co. v. Ellis*, 165 U. S. 150, 155, 159, 160, 165, 41 L. ed., 666, 668, 670, 671, 17 Sup. Ct. Rep. 255, 257, 259, 261. These principles were recognized and applied in *Citting v. Kansas City Stock Yards Co.*, 183 U. S. 79, sub. nom. *Cotting v. Goddard*, ante, 92, 22 Supt. Ct. Rep. 30, in which it was unanimously agreed that a statute of Kansas regulating the charges of a particular stock yards company in the state, but which exempted certain stock yards from its operation, was repugnant to the Fourteenth Amendment in that it denied to that company the equal protection of the laws."

The case of *McFarland v. American Sugar Refining Company*, 241 U. S. 79, 60 L. ed. 899, is directly in point. In that case the American Sugar Refining Company, defendant in error, had a large sugar refinery plant at Chalmette, Louisiana, which had been idle for quite a period of time. The Louisiana Legislature passed an act punishing as a monopoly any sugar refiner having a refinery in the state which should pay more for sugar out of the state than in the state; and further provided that if any refiner allowed its plant

to remain idle for a period of twelve months it should be presumed that it was done for the purpose of violating the act. The American Sugar Refining Company, having ceased to operate its plant, proceedings were taken against it by the State officers whose duty it was to enforce the act, and an injunction was obtained in the United States Court. The Court held that the act authorizing the creation of a presumption of a violation of the act from the failure of the plaintiff in error to operate its plant for twelve months was a deprivation of property without due process of law, the Court using the following language:

> "The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained. We deem it sufficient to refer to those that were mentioned by the District Court; a classification which, if it does not confine itself to the American Sugar Refinery, at least is arbitrary beyond possible justice, and a creation of presumption and special powers against it can have no foundation except the intent to destroy. As to the classification, if a powerful rival of the plaintiff should do no refining within the state, it might systematically pay a less price for sugar in Louisiana than it paid elsewhere with none of the consequences attached to doing so in the plaintiff's case. So of any one who purchases but does not refine. So of any concern that does not buy and refine more sugar 'than the aggregate of the sugar produced by it from cane grown and purchased by it,' as easily might happen with a combination of planters, such as the answer gives us to understand has been attempted heretofore.
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> "As to the presumptions, of course, the Legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is 'essential that there shall be some rational

connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.' *Mobile, J. & K. R. Co. v. Turnipseed*, 219 U. S. 35, 43, 55 L. ed. 78, 80, 32 L. R. A. (N.S.) 226, 31 Sup. Ct. Rep. 136, Ann. Cas. 1912 A. 463 2 N. C. C. A. 243. The presumption created here has no relation in experience to general facts. It has no foundation except with tacit reference to the plaintiff. But it is not within the province of a legislature to declare an individual guilty of presumptively guilty of a crime. If the statute had said what it was argued that it means, that the plaintiff's business was affected with a public interest by reason of the plaintiff's monopolizing it, and that therefore the plaintiff should be prima facie presumed guilty upon proof that it was carrying on business as it does, we suppose that no one would contend that the plaintiff was given the equal protection of the laws. We agree with the court below that the act must fall as a whole, as it falls in the sections without which there is no reason to suppose that it would have been passed."

In other words, there was a clear case of discrimination because, as the court pointed out, a refiner operating its plant in Louisiana could have paid a higher price for sugar outside of the state than in the state without incurring the penalties provided in the act.

In *Buck v. Kuykendall*, 267 U. S. 307, 69 L. ed. 623, the court held that the operator of an auto vehicle could not be denied the right to operate on the highways except by securing a certificate of public convenience. The court used the following language:

"By motion to dismiss, filed in this court, the state makes the further contention that Buck is estopped from seeking relief against the provisions of section 4. The argument is this: Buck's claim is not that the department's action is unconstitutional because arbitrary or unreasonable. It is that section 4 is unconstitutional because use of the highways for interstate commerce is denied unless the prescribed certificate shall have been secured. Buck applied for a certificate. Thus he invoked the exercise of the power which he now assails. One who invokes the provisions of a law may not thereafter question its constitutionality. The argument is unsound. It is true that one cannot, in the same proceeding, both assail a statute and rely upon it. *Hurley v. Commission of Fisheries*, 257 U. S. 223, 225, 66 L. ed. 206, 207, 42 Sup. Ct. Rep. 83. Compare *Wall v. Parrot, Silv. & Copper Co.* 244 U. S. 407, 411, 61 L. ed. 1229, 1230, 37 Sup. Ct. Rep. 609. Nor can one who avails himself of the benefits conferred by a statute deny its validity. *Pierce Oil Corp. v. Phoenix Ref. Co.* 259 U. S. 125, 66 L. ed. 855, 42 Sup. Ct. Rep. 440; *St. Louis Malleable Casting Co. v. George C. Prendergast Constr. Co.* 260 U. S. 469, 472, 67 L. ed. 351, 354, 43 Sup. Ct. Rep. 178. But in the case at bar, Buck does not rely upon any provision of the statute assailed; and he has received no benefit under it. He was willing, if permitted to use the highways, to comply with all the laws relating to common carriers. But the permission sought was denied. The case presents no element of estoppel. Compare *Arizona ex rel. Gaines, v. Copper Queen Consol. Min. Co.* 233 U. S. 87, 94 et seq. 58 L. ed. 863, 866, 34 Sup. Ct. Rep. 546."

POINT IV

SECTIONS 13 AND 19 OF THE SHRIMP ACT, AND SECTIONS 3, 23 AND 24 OF THE OYSTER ACT, AS ENFORCED AND CONSTRUED BY THE DEFENDANTS IN ERROR, EACH VIOLATE THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IN THAT THE SAME DEPRIVE THE APPELLANTS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW, AND DENY THEM THE EQUAL PROTECTION OF THE LAW.

The Shrimp Act prohibits shrimp from being transported from the State of Louisiana, except after the heads and hulls have been taken therefrom, where such shrimp are caught within three miles of the Louisiana shores, in the waters described in the original bill of complaint in cause Number 768.

The Oyster Act prohibits oysters being shipped from the State of Louisiana in the shells under any circumstances.

In cause Number 768 the original bill of complaint charges that the raw shrimp dealers in the State of Louisiana are intentionally and habitually, to the knowledge of defendants, permitted to ship out the shrimp in violation of the Act, and that the same is being so construed as if the Act prohibited the shipping of shrimp out of the State for packing purposes. (Tr. 16).

In cause Number 769 (Tr. 18), the original bill of complaint charges that individual firms and corporations are knowingly and intentionally by the defendants in error permitted to ship out raw oysters in the shells, and that the Act is being so construed as only to prohibit oysters being transported from the State for the purpose of being canned.

When the Act of 1910 was passed, under construction in the Ferandeau Case, it prohibited the shipment of oysters out of the State to be canned. In the passage of the Act of 1910 the legislature of Louisiana was confronted with the fact that it did not desire to prohibit the shipment of oysters in the shells. To do so would interfere with what is known as the "raw oyster business"; that is to say, the shipping of oysters in the shells to other states for use as a food, especially in hotels and restaurants, which occasioned the Act of 1910 only prohibiting oysters being shipped out of the State for canning. In the meantime, prior to the passage of the Act of 1926, not only had the shipment of raw oysters in shells increased in volume and importance, but the shipment of raw shrimp had likewise grown to be one of great magnitude.

The proof in the Shrimp Case established that since the passage of the Shrimp Act, now under review, large quantities of raw shrimp were shipped out of the State of Louisiana by firms, individuals, and corporations, as dealers, to all parts of the country; and the same proof was offered in respect to the shipment of oysters in the shells. The proof not only establishes that the shipment of raw shrimp and oysters in the shells is one of very great importance in interstate commerce, but that there is every reason to expect that the volume and importance thereof will be greatly increased in the future; that canned shrimp and canned oysters are shipped to interior points where fresh shrimp and oysters cannot be conveniently obtained; but that with improved methods of refrigeration such as the development of dry ice, with improved facilities for transportation such as aviation, the sale of raw shrimp and raw oysters in the shells will gradually take the place of the manufactured packed and canned products. The people of Louisiana, therefore, appreciating the importance of the business and the development of which the same was capable,

in the Act of 1910 sought to preserve to itself all the benefits to be derived therefrom by permitting the shipment of oysters in the shells, where the same were not to be canned, out of the State.

The proof in this case establishes that when the shrimp and oyster bills were before the Legislature of the State of Louisiana in 1926 the packers at Biloxi, some of them Louisiana citizens, went before the Legislature of the State of Louisiana in order to defeat the passage of these bills. The statutes on their faces, if enforced as written, would necessarily interfere with and break up the raw shrimp business, as well as the large and profitable business of shipping out raw oysters in the shells. Therefore, the proof showed that the dealers in Louisiana in the shipment of raw shrimp and oysters in the shells made common cause with the packers on the Mississippi coast to defeat the bills; that an engagement was made to meet the Louisiana shrimp and oyster packers at Baton Rouge and use all legitimate efforts to defeat the passage of the bills by appearing before a legislative committee. The proof shows that the raw shrimp and oyster packers came to Baton Rouge in the evening, but did not go before the committee; but, upon the other hand, informed those persons interested in packing shrimp and canning oysters on the Mississippi coast that they had been promised, if their opposition was withdrawn to the bill, that the Act would never be construed or enforced so as to prevent or interfere with the shipment of raw shrimp in the hulls or oysters in the shells. The affidavit of L. O. Johnson, Jr., and R. H. Chinn, (Tr. 54) and the appellants at the trial of the application for interlocutory injunction in cause Number 768 introduced a large volume of proof going to show that the Shrimp Act in question was construed in accordance with the agreement with raw shrimp dealers, set out in the foregoing affidavits.

The following affidavits were introduced for the purpose of showing that after passage of the Shrimp Act and its effective date of enforcement, while the officers of the Conservation Department were active, alert and aggressive in preventing shrimp from being taken out of the Louisiana waters to be packed out of the State, they knowingly permitted raw shrimp to be shipped out of the State without the heads and hulls being taken therefrom, although caught within three miles of the Louisiana shores: Affidavit of L. O. Johnson, Jr., and R. H. Chinn (Tr. 54-57); Affidavit of A. S. Gorenflo, a Louisiana fisherman, and eleven other fishermen, (Tr. 60). They make affidavit that no commercial shrimp are caught in Louisiana waters beyond the three mile limit; that all shrimp which are caught in Louisiana waters suitable for commercial purposes are caught within the three mile limit (Tr. 64); Affidavit of L. O. Johnson, Jr. (Tr. 66) that raw shrimp are shipped from the State of Louisiana without any kind of objection on the part of Louisiana officers, in violation of the Act (Tr. 66-67). See affidavit of Ernest Desporte (Tr. 82); Affidavit of Alex Misticos (Tr. 104), which is in the following language:

> "Personally came before me, the undersigned officer in and for the aforesaid state and county the within named Alex Misticos, who states that he is the proprietor of the Belmont Cafe in Jackson, Mississippi; that he buys raw shrimp from Paul Bougon Fish & Oyster Company, Inc., of New Orleans, Louisiana; that they are shipped to him raw shrimp, with the hulls on them, the heads taken off; that they come to him by express and are shipped in cases containing approximately fifteen to twenty pounds per case; the said shrimp being packed in ice in order to preserve them. Affiant buys in this manner about two cases every two or three days, and buys them from New Orleans, Louisiana, all the year around; that he herewith attaches as Exhibits 1 and 2 hereto tags taken from

cases of oysters or shrimp, which were received by him on Saturday morning October 22nd, 1927, from said Paul Bougon Fish & Oyster Company, Inc., New Orleans, Louisiana. Affiant states that he can obtain such shrimp from New Orleans, Louisiana, which are sea shrimp, in unlimited quantities."

See affidavit of L. J. Folse (Tr. 106), who states that he is thoroughly familiar with what is known as the "raw shrimp business" as carried on in the State of Louisiana; that he made a visit to the City of New Orleans, observed the operation of the business, and found from his observation that raw shrimp in unlimited quantities were being shipped out of the State of Louisiana in interstate commerce. The affidavit speaks for itself.

The only proof offered by the defendants in error contradictory thereof was the affidavit of Percy Viosca, Jr., (Tr. 39) who states that he is the director of the Fisheries Division of the Department of Conservation, and that such shrimp as are leaving the State of Louisiana in the raw state are taken more than three miles from the Louisiana shores.

We now turn to the question of the proof in Cause Number 769, in respect to the shipment of oysters in the shells. Of course, it was necessary for us to prove that the shrimp being shipped out were caught within three miles of the Louisiana shores. We endeavored to make this proof by the affidavits of twelve fishermen who lived in the neighborhood and fished in the waters where the shrimp are caught, who stated that all commercial shrimp are caught within three miles of the shore. The only contradiction of this proof is the affidavit of Dr. Viosca, if it amounts to a contradiction.

When we turn, however, to Cause Number 769, the Oyster Case, we are relieved of the complication growing out of the place where the oysters are caught, because the law prohibits any shipment out whatsoever; and in this case we offered a mass of testimony, which was practically uncontradicted, that firms, corporations and individuals in the State of Louisiana dealing in raw oysters are allowed without restriction to ship the same in the shells in interstate commerce, and that the business is being carried on just as before the Act. In other words, that the agreement made with the raw shippers, in order to get them to withdraw their opposition to the bill, is being not only literally carried out, but construed literally in their favor.

In this connection we would call your Honors' attention to the fact that the only contradictory proof in respect to the shipment of raw oysters in the shells is the affidavit of James N. McConnell in cause Number 769 (Tr. 87), which contains the following statement:

> "So far as I have any knowledge, there are no oysters in the shells permitted to go outside the state, and my force is instructed to prevent that being done. If it is done it is done surreptitiously and without the knowledge of any of our officers.
>
> "The supply of oysters in Louisiana is not inexhaustible and it is necessary that conservation measures be applied thereto in order to insure an ample supply of oysters."

We direct the attention of the Court to the only testimony which the defendants in error offered in the first instance, in order that we may with greater bene-

fit to the Court demonstrate not only that the allegations of the bill of complaint were not denied in respect thereto, but that the testimony offered for the plaintiffs in error was not contradicted at all.

First, we direct the attention of the Court to the original bill of complaint, filed January 20, 1928, wherein it was charged that the Act was being so construed by the defendants in error as if the same only prohibited the shipping of oysters out of the State for the purpose of being canned. We direct your Honors' attention to the fact that no answer was filed to the original bill of complaint; the defendants in error filed what is known as a return or an exception (Tr. 36), which necessarily admitted the allegations therein contained. But that is not all. As before stated, the bill was filed on the 20th, day of January, 1928. Well, certainly, if your Honors please, that put the defendants in error on notice as to the contention of the appellants as to the construction of the Act complained of. In the light of this explanation, we now direct the attention of the Court to the undisputed proof in respect to the subject-matter. The affidavit of A. R. Heidenheim (Tr. 43) contains the following language:

> "Affiant further states on information and belief that the law now complained of is now being openly violated by shippers of raw oysters who are allowed to ship oysters in large quantities to numerous persons without removing the shell, the whole purpose of said law being to compel canners of oysters to locate their canning factories in Louisiana."

The affidavit of R. H. Chinn (Tr. 47) to the same effect. We especially direct the attention of the Court to the affidavit of Theodore Grillis (Tr. 52). The affidavit was made January 26, 1928, six days after the original bill of complaint was filed and the defendants in error put on notice as to the construction being

put on the Act. Mr. Grillis operates a restaurant in the City of Jackson, Mississippi; he offers for sale, and sells, large quantities of oysters in the shell, which he buys from New Orleans, Louisiana. The affidavit is so illuminating that we quote from the same literally, as follows: (Tr. 52-54):

> "Affiant states that there is hereto attached a photograph of his restaurant taken from the exterior, showing oysters on the shell on the inside of the show window kept on ice; that said oysters are what is known as Louisiana oysters, which are grown and shipped to affiant in Jackson, Mississippi, by American Railway Express from New Orleans in the State of Louisiana; that just inside of said show window is a sign, conspicuously posted, upon which is written the following language: 'Louisiana Bayou Cook Oysters on the Half Shell.' That affiant is now and has been continuously solicited by New Orleans packers and dealers by price lists, wherein they have sought to sell him oysters in the shell to be shipped from New Orleans in the State of Louisiana, and that this course of business existed prior to January 1, 1928, and has continued without interruption since such date; that he has continuously, since the first of January, 1928, in the due course of business, procured from packers and dealers in New Orleans, Louisiana, shipped to him by express, oysters in the shell, which he has in due course of business sold to his customers in his restaurant, the photograph of which is hereto attached and marked Exhibit 1, the same being asked to be considered as if set out herein in full in words and figures.
>
> "Affiant states that he gets several barrels of oysters in the shell per week, shipped to him by dealers in New Orleans, Louisiana, to Jackson, Hinds County, Mississippi; that the oysters which he gets are merely measured by his requirements;

that he could buy from such source oysters in the shell by the car load per day, without restriction or limitation. Affiant states that upon the morning of January 23rd, 1928, in due course of business, he received from Paul Ziblich Company, Inc., of New Orleans, Louisiana, one barrel of raw oysters; that said oysters came to him by express; that upon the morning of January 24th, 1928, he received from the said Louisiana corporation two barrels of raw oysters in shells in interstate commerce by the American Railway Express Company; that the original invoice is hereto attached and marked Exhibit 2, the same being asked to be considered as if set forth herein in full in words and figures; that the American Railway Express receipt therefor, with charges thereof, is hereto attached and marked Exhibit 3, the same being asked to be considered as if set forth herein in full in words and figures.

"Affiant states that he believes he could have gotten a car load of raw oysters in shells contained in barrels or sacks as readily and easily as the foregoing purchases were made. Affiant states that the oysters received by him on the morning of January 24th, 1928, as were other oysters, were shipped in barrels containing a top set down within the barrel; that the top is made of wood, and on the top of the barrel there was contained, and on top of all the barrels shipped to him, there is usually contained, the following indorsement: 'The Original Bayou Creek Oysters, packed by Paul Ziblich Company, Inc., New Orleans, La., State Board of Health Permit No. 36'.

"Affiant states that he will endeavor to have made a photographic copy of the top of said barrel with the endorsement hereinbefore set out, and if he can do so, the same will be made Exhibit 4 to this affidavit, and the same is asked to be considered as if set out herein in full in words and figures, affiant attaches exhibits and letter dated Jan. 9th, 1928 from said Ziblich Co., Inc."

Dominick Caravella, who operates a restaurant in Vicksburg, Mississippi, (Tr. 54) makes a similar affidavit, dated the 24th day of January, 1928.

B. C. Young, a restaurant keeper, Vicksburg, Mississippi, makes a similar affidavit.

Pete Messina, a restaurant keeper, in Vicksburg, Mississippi, on January 26, 1928, (Tr. 56) makes a similar affidavit showing that restaurant keepers since the 1st of January, 1928, before and after the filing of the original bill of complaint, were obtaining from New Orleans, Louisiana, in any quantities which they desired, raw oysters in the shells.

Charley Chagare, operator of a restaurant in Meridian, Mississippi, (Tr. 58) makes a similar affidavit.

K. Joseph, a restaurant keeper, of Hattiesburg, Mississippi, (Tr. 58) makes a similar affidavit, showing that oysters in the shells were during the period mentioned being shipped from New Orleans, Louisiana, to Meridian and Hattiesburg, Mississippi.

E. J. Misticos, operator of a restaurant in Jackson, Mississippi, (Tr. 59) makes a similar affidavit under date of January 26, 1928, showing that upon the morning of the 24th of January, 1928, he received a shipment of raw oysters in the shells from New Orleans, Louisiana, identifies the invoice of the American Railway Express Company receipted therefor, and states that they may be bought in unlimited quantities. We refer the Court to the affidavit.

We also refer the Court to the affidavit of D. J. Goodin, who went to New Orleans, Louisiana, as the representative of the plaintiffs in error, about January 10, 1928, and stayed a week. In his affidavit (Tr. 61) he describes in great detail the shipping out of raw

oysters from the City of New Orleans, Louisiana, in interstate commerce; that as it appears from the affidavit, the dealers in the City of New Orleans are active and alert, soliciting the trade; that a shipment may be procured to be sent anywhere in the United States in unlimited quantities without any kind of restriction, no inspection thereof, and no effort made to enforce the law. We direct the attention of the Court to the affidavit. The witness further states that he traveled from New Orleans, Louisiana, to Jackson, Mississippi, on an interstate passenger train, and that after he passed the Louisiana line and reached Mississippi, Louisiana oysters on the half shell were served in the dining car without any kind of restriction. Affiant further states (Tr. 66) that on January 22nd, 1928, he went to Memphis, Tennessee, on an interstate passenger train, and that raw oysters on the half shell were served in the dining car; that in Memphis, Tennessee, there is a restaurant known as the "Madison Sea Food Company", in front of which is a large window filled with raw oysters in the shell, shipped from New Orleans, Louisiana. The witness further makes affidavit that he applied to the representative of the Express Company in Memphis, Tennessee, and he admitted that they were handling out of New Orleans, Louisiana, into Mississippi and Tennessee shipments of raw oysters in the shell, declined to show him the books, but stated, however, that the information would be furnished before any court.

We also refer to the affidavit of W. H. Lucas (Tr. 69) the restaurant keeper at Laurel, Mississippi, in which he states that you can buy all the oysters in the shell from New Orleans, Louisiana, desired.

We also direct the attention of the Court to the affidavit of J. R. McKinnon, (Tr. 72) who states that he went to New Orleans, Louisiana, observed the conditions, and actually saw and observed the business of the shipment of raw oysters in the shells out of the City of New Orleans in large quantities, with no effort to enforce the law.

We also refer to the affidavit of Henry Weidmann, (Tr. 74) operator of a restaurant in Meridian, Mississippi, from which it appears that before and after the filing of the original bill of complaint, without restriction, he procured oysters in the shell from New Orleans, Louisiana.

From these affidavits, it abundantly appears that while individuals, firms and corporations engaged in the raw oyster and raw shrimp business are permitted in unlimited quantities to ship out in interstate commerce shrimp and oysters for commercial purposes, the plaintiffs in error, Louisiana corporations, are denied the same privilege. In other words, the law is being in its construction so enforced as to violate the Fourteenth Amendment to the Constitution of the United States, in that the same deprives the plaintiffs in error of their property without due process of law, and denies them the equal protection of the law, in respect to which we submit the following authorities:

The act of officers charged with the enforcement of the act is the act of the State. In the case of *Home Telephone & Telegraph Co. v. City of Los Angeles*, 227 U. S. 278, 57 L. ed. 510, it appeared that the officers of a municipality, acting under authority given by state statute and city ordinance, put into effect a city ordinance applying confiscatory rates to the telephone company. The enforcement of the ordinance fixing the rates was enjoined on the ground that the city violated the Fourteenth Amendment to the Constitution of the United States. The municipality claimed that the act of the municipal officers was not that of the state. This court held that when certain officers had the power to enforce a legislative enactment, or a municipal ordinance, that the conduct of such officers was the act of the State.

In the case of *Neal v. Delaware*, 103 U. S. (13 Otto) 370, 26 L. ed. 367, the plaintiff in error was a negro, indicted for crime, and challenged the right of the

Court to proceed with his trial because under the local practice members of the African race, to which he belonged, were intentionally and systematically and customarily eliminated from jury service, which, it was claimed, was an unjust discrimination against him and the members of his race, and denied him the equal protection of the law. He was convicted and appealed to the Supreme Court of the United States, and in reversing the case the following language was used upon the question of discrimination:

> "What we have said leads to the conclusion that the State Court did not err in disregarding the petition for removal.
>
> "The remaining question relates to the denial of the motions to quash the indictment and the panels of jurors. The grounds upon which the motions were placed were formally and distinctly stated, and are fully set out in the bill of exceptions. They were the same as those assigned in the verified petition filed by the accused for the removal of the prosecution into the Circuit Court of the United States, viz: That from the grand jury that found, and from the petit jury that was summoned to try the indictment, citizens of the African race, qualified in all respects to serve as jurors, were excluded from the panel, because of their race and color; and that, in fact, persons of that race, though possessing all of the requisite qualifications have always, in that county and state, been excluded, because of their race; from serving on juries. That colored persons have always been excluded from juries in the courts of Delaware was conceded in the argument, and was likewise conceded in the court below. The Chief Justice, however, accompanied that concession with the remark in reference to this case, 'That none but white men were selected is in no wise remarkable in view of the fact—too notorious to be

ignored—that the great body of black men residing in this state are utterly unqualified by want of intelligence, experience, or moral integrity to sit on juries.' The exceptions, he said, were rare.

"Although, for the reasons we have given, the accused was not entitled to a removal of this prosecution into the Circuit Court of the United States, he is not without remedy if the officers of the State charged with the duty of selecting the jurors were guilty of the offense charged in the defendant's petition. A denial upon their part of the right of the accused to the selection of grand and petit jurors without discrimination against his race, because of their race, would be a violation of the Constitution and laws of the United States, which the trial court was bound to redress. As said by us in *Va. v. Rives*, 'The Court will correct the wrong; will quash the indictment, or the panel; or, if not, the error will be corrected in a superior court,' and, ultimately, in this Court upon review (100 U. S. 322— X XV—671).

"We repeat what was said in that case, that while a colored citizen, party to a trial involving life, liberty or property, cannot claim, as matter of right, that his race shall have a representation on the jury, and while a mixed jury in a particular case is not within the meaning of the Constitution, always or absolutely necessary to the equal protection of the law, it is a right to which he is entitled, 'That in the selection of jurors to pass upon his life, liberty or property, there shall be no exclusion of his race and no discrimination against them, because of their color.' So that we need only inquire whether, upon the showing made by the accused, the Court erred in overruling the motions to quash the indictment and the panels of jurors."

In the case of *Carter v. State of Texas*, 177 U. S. 442, 33 L. ed. 839, Carter was a negro indicted for crime, who moved to quash the indictment because members of the African race, to which he belonged, although qualified, were systematically and intentionally excluded from service on the juries, which right was denied him. He asserted that he was denied the equal protection of the law, and appealed to the Supreme Court of the United States. The case was reversed, the court using the following language:

> "Wherever by any action of a state, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race and color, from serving as grand jurors in the criminal prosecutions of a person of the African race, the equal protection of the laws is denied him, contrary to the Fourteenth Amendment of the Constitution of the United States, (*Strauder v. West Virginia*, 100 U. S. 303, 25 L. ed. 664; *Neal v. Delaware*, 103 U. S. 370, 379, 26 L. ed. 567, 574; *Gibson v. State of Miss.* 162 U. S. 565, 40 L. ed. 1075, 16 Sup. Ct. Rep. 904)."

A state court may control the constitutionality of a state statute through adding something to it or taking something away from it by construction.

See the case of *Osborne v. State of Florida*, 164 U. S. 650, 41 L. Ed. 586, wherein the Supreme Court of the United States had under construction a statute of the State of Florida, which on its face compelled all express companies doing business within the state to pay a certain privilege tax. The Supreme Court of the State of Florida had passed on the act and held that it only applied to intrastate business, although on its face in fact it did refer both to interstate and intrastate business. The Supreme Court of the United States, in sustaining the validity of the statute, used the following language:

"The Supreme Court of Florida has construed the ninth section of this act and has held in express terms that it does not apply to or affect in any manner the business of this company, which is interstate in its character; that it applies to and affects only its business which is done within the state or as is so termed local in its character; and it has held that under that statute so long as the express company confines its operation to express business that consists of interstate or foreign commerce, it is wholly exempt from the legislation in question."

The doctrine was approved in *Hamlin v. Texas*, 198 U. S. 579, 49 L. Ed. 1171.

In the case of *Armour Packing Co. v. Lacey*, 200 U. S. 234, 50 L. Ed. 456, where a privilege tax was imposed on packing houses, the Supreme Court of the United States held the act valid, because the state court by construction confined the act to intrastate business.

The same result was had in *Pullman Co. v. Adams*, 189 U. S. 422, 41 L. Ed. 878, affirming 78 Miss. 839.

A statute may be construed by officers.

In the case of *Greene v. R. R. Co.* 244 U. S. 499, 61 L. Ed. 1280, which was a complaint in equity in the federal court on account of discrimination of taxing officers, the court used the following language:

"A substantially identical question was presented to the circuit court of appeals for the sixth circuit in *Taylor v. Louisville & N. R. Co.*, 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350, where the Constitution of Tennessee declared that all property should be taxed according to its value, to be ascertained as the legislature should direct, 'so

that taxes shall be equal and uniform throughout the state,' and the statutes required that the real value of the property be adopted, and where as here, railroad property and some other kinds were valued by one set of officials, and property in general by another, without provision for equalization as between the two classes. The Court, by Circuit Judge Taft, said (p. 364): 'The sole and manifest purpose of the Constitution was to secure uniformity and equality of burden upon all the property in the state. As a means of doing so (conceding the defendant's construction is the correct one), it provided that the assessment should be according to its true value. It emphasized the object of the section by expressly providing that no species of property should be taxed higher than any other species. We have before us a case in which the complaining taxpayer, and other taxpayers owning the same species of property, are taxed at a higher rate than the owners of other species of property. This does not come about by legislative discrimination, but by the intentional and systematic disregard of the law by those charged with the duty of assessing all other species of property than that owned by complainant and its fellows of the same class. * * * (p. 365). The question presented is, then, whether when the sole object of an article of the Constitution is being flagrantly defeated, to the gross pecuniary injury of a class of litigants, and one of them appeals to a court of equity for relief, it must be withheld because the only mode of granting it will involve an apparent departure from the method marked out by the Constitution and the law for obtaining its sole object. We say 'apparent' departure from the constitutional method, because that instrument contemplated a system in which all property should be assessed at its real value. * * * The court is placed in a dilemma, from which it can only escape by taking that path

which, while it involves a nominal departure from the letter of the law, does injury to no one, and secures that uniformity of tax burden which was the sole end of the Constitution. To hold otherwise is to make the restrictions of the Constitution instruments for defeating the very purpose they were intended to subserve. It is to stick in the bark, and to be blind to the substance of things. It is to sacrifice justice to its incident."

In response to the argument that the conduct of administrative officers could not of itself be a violation of the Constitution of the United States, the court used the following language:

"The fact should be emphasized that the Kentucky court of last resort, far from holding that discrimination such as is here complained of is in accord with the Constitution and laws of the state, has recognized distinctly that it is not; but has felt constrained to hold that, under circumstances similar to those of the present cases, there is no redress in the courts of the state; and that the constitutional provisions for equality and uniformity are capable of being put into execution only through the selection of proper assessing officers. *Louisville R. Co. v. Com.* 105 Ky. 710, 719, 49 S. W. 486. This, while admitting the wrong, merely denies judicial relief, and is not binding upon the Federal Courts."

In response to the argument that the injured person could compel compliance with the law as to other persons, the court used the following language:

"It is contended that appellees, if aggrieved, had another and more equitable remedy than a suit for injunction; that the law of the state provides a method by which, instead of lowering the assessments upon the property of appellees, they

could by proper procedure compel the assessment of the property of other taxpayers to be increased so as to come within the constitutional requirement as to fair cash value, and hence that it was the duty of appellees to adopt that method. The reference is to Par. 4115-4120, Ky. Stat., which require the county board of supervisors to convene annually and make a careful examination of the assessor's books and each individual list thereof, empowering them to increase or decrease any list; 'but the board shall not reduce or raise any assessment unless the evidence be clear and unmistakable that the valuation is not a fair cash value.' By Par. 4123, they may hear complaints, summon and swear witnesses, and require them to testify. There is nothing in these provisions to indicate that parties in the situation of the present appellees, who have no different interest in the under valuation by the county assessors than that which might be possessed by any other citizen of the state, are entitled to be heard to complain that the county assessments are too low. Nor is any case cited where such a complaint has been entertained. The remedy of reassessment appears to be a public, not a private, remedy."

In the case of *Yick Wo. v. Hopkins*, 118 U. S. 356, 30 L. Ed. 220, the City of San Francisco passed an ordinance prohibiting the carrying on and operating of a laundry in frame buildings, except with the consent and permission of the local officer. The plaintiff in error and fellow countrymen, subjects of the Emporer of China, who had carried on their business for many years in the City, and desired to continue the same, though the permission was accorded to persons of other nationality, were denied the permission. The plaintiff in error appealed to the courts, asserting rights under the 14th Amendment to the Constitution of the United States, the equal protection of the law.

The Supreme Court of the United States held that in the administration of the law the rights of the plaintiff in error were denied, reversed the case, and used the following language:

> "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play of action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration, the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights of life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be government of laws and not of men.' For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the employment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself * * * *."

The Louisiana officers cannot justify themselves by the mere assertion that they had no knowledge thereof.

The evidence established, without contradiction, (1) that the dealers in New Orleans, Louisiana, knew that they could ship in unlimited quantities; (2) the carriers knew that they might with impunity transport them in unlimited quantities; (3) the purchasers in other states were actively advised that they could buy them in unlimited quantities. Therefore, the defendants in error will not be heard to say in any court that they had no knowledge thereof.

It is abundantly clear from this record that since the Act of 1910 had been stricken down because it prohibited the shipment of oysters to be canned, and in order to avoid the Act being declared invalid, and also in order to avoid the opposition of Louisiana dealers in these products, it was agreed that the Act should be so construed as not to apply to commercial shipments, not going to a factory to be packed or canned, and that such construction has been uniformly placed upon the Act; no effort made to inspect; no instructions given to the carriers not to transmit the commodity.

It would be violence to this record to hold other than that the defendants in error actually knew, and were responsible for, the construction placed upon the Act.

In the case of *McMillan v. Sims* (Wash) 225 Pac. 240, discrimination in the enforcement of the Fish Laws of the State of Washington was condemned in the following language:

> "Summarizing, appellants by their complaint prayed the right to present testimony to establish two facts pleaded:

"First, that they and the West Beach, West Shore, and Burroughs Bay trap owners are similarly situated, and that the fishing operations of each heretofore conducted and hereafter to be conducted have produced and will produce a similar effect, varying only in degree of prejudice and injury to the perpetuation of the salmon species, if any such effect can be found to exist in fact.

"Second, that no reason or necessity exists or has existed or will exist for closing the fishing in the waters where appellants' traps are located, but that instead complainants' combined business and industry can be maintained and continued in common with that of the West Beach, West Shore, and Burroughs Bay owners by the establishment of a certain closed weekly seasons, if in fact any preventive regulation is necessary.

"The demurrer, of course, admitted the truth of all the allegations well pleaded in the complaint. The only question, therefore, is whether those allegations sufficiently allege fraudulent, capricious, or arbitrary action on the part of the state fisheries board to warrant the relief sought.

"Respondents assert that the well-established principle in this state that the state owns all of the fish and game while in the state of nature, and in legislating in reference thereto simply legislates with reference to its own property, justifies such order as here made, relying on *State v. Tice*, 69 Wash. 403, 125 Pac. 168, 41 L. R. A. (N.S.) 469, and *Vail v. Seaborg*, 120 Wash. 136, 207 Pac. 15. Respondents then contend that there is a vital distinction between legislation affecting the privilege of taking fish and that affecting ordinary private businesses in which persons acquire vested rights.

"It is true that we held in *Vail v. Seaborg*, supra, that the present fisheries code could be upheld as valid and constitutional for the reason that the act was merely regulatory dealing with property belonging wholly to the people of the state; that the details of such relation merely were committed to the administrative officers. And we held in *State v. Tice*, supra, that there is no private right or privilege to take fish in waters of the state except as granted by the state, and that Laws of 1911, p. 456, regulating fishing for salmon, and making a different closed season in different waters of the state, was not unconstitutional or unreasonable, since it affected equally and impartially all persons similarly situated.

"But that is not the case here. The order here attacked does not affect equally and impartially all persons similarly situated, if the allegations of the complaint are true.

"An examination of a map of the waters in the locality in question discloses that the waters in question are all practically the same waters. They are alleged in the complaint to be so contiguous and closely interrelated that apparently the same conditions must exist in all. The schools of salmon seeking the entrance to Skagit river and its tributary streams must necessarily pass through the same waters and the same traps. Hence it would appear that the order of the fisheries board does not justly and impartially protect the fish in the waters seeking entrance to the fresh water streams of the state, but arbitrarily prohibits some from fishing in those waters, and permits others to fish. While it is true that the state may generally do with its own property what it will, no administrative board in carrying out the intent of the legislature by the fisheries act to protect the food fish of the state which is the property of the state can grant a privilege to

some and deny it to others similarly situated to take food fish. Such conduct is arbitrary and discriminatory. That that is the effect of the order complained of, if the allegations of the complaint are true, cannot be doubted.

"While the state fisheries board has very great powers under the act in question, which have been sustained in general by the decisions in our former cases cited, yet it is not omnipotent. The matter is affected with a very great public interest, and in dealing with the property of the state so affected by public interest the state fisheries board must not act arbitrarily and discriminatorily.

"All that is sought in this action, so far as we are now concerned, is to present facts to a trial court for the purpose of proving that no state of circumstances could exist to justify the rule complained of. While the board might adopt a rule prohibiting fishing in all the waters where these same schools of salmon run, to the end that the right to fish for the same should be taken away from all individuals, they have not the right to confer upon certain individuals and deny to others similarly situated the right to take fish upon the same conditions and terms."

In the case of *Buck v. Kuykendall*, 267 U. S. 317, 69 L. ed. 623, the Court used the following language:

"By motion to dismiss filed in this court, the state makes the further contention that Buck is estopped from seeking relief against the provisions of Sec. 4. The argument is this: Buck's claim is not that the department's action is unconstitutional because arbitrary or unreasonable. It is that Sec. 4 is unconstitutional because use of the highways for interstate commerce is denied unless the prescribed certificate shall have been secured. Buck applied

for a certificate. Thus he invoked the exercise of the power which he now assails. One who invokes the provisions of a law may not thereafter question its constitutionality. The argument is unsound. It is true that one cannot, in the same proceeding, both assail a statute and rely upon it. *Hurly v. Commission of Fisheries*, 257 U. S. 223, 225, 66 L. ed. 206, 207, 43 Sup. Ct. Rep. 83. Compare *Wall v. Parrot Silver & Copper Co.*, 244 U. S. 411, 61 L. ed. 1229, 1230, 37 Sup. Ct. Rep. 609. Nor can one who avails himself of the benefits conferred by a statute deny its validity. *Pierce Oil Corp. v. Phoenix Ref. Co.*, 259 U. S. 125, 66 L. ed. 855, 42 Sup. Ct. Rep. 440; *St, Louis Malleable Casting Co. v. George C. Pendergrast Constr. Co.* 260 U. S. 469, 472, 67 L. ed. 351, 354, 43 Sup. Ct. Rep. 178. But in the case at bar, Buck does not rely upon any provision of the statute assailed; and he has received no benefit under it. He was willing, if permitted to use the highways, to comply with all the laws relating to common carriers. But the permission sought was denied. The case presents no element of estoppel. Compare *Arizona ex rel. Gaines v. Copper Queen Consol. Min. Co.* 233 U. S. 87, 94, et seq., 58 L. ed. 863, 866, 34 Sup. Ct. Rep. 546."

In the case of the *State of Mississippi v. James Hill*, 53 South. 411, 31 L. R. A. (N.S.) 591, the Supreme Court of Mississippi held that the right to fish in waters of the state could not be limited to residents of the county.

In the case of *Gustafson v. State of Texas*, 43 L. R. A. 16, the Supreme Court of Texas held unconstitutional and discriminatory a statute which restricted the right of citizens to take fish from the waters of Texas unless licenses were obtained, and prohibited the issuance of licenses except to those who were taxpayers.

The same principle is applied in the case of *Nixon v. Herndon*, 273 U. S. 536, 71 L. ed. 759, wherein the court used the following language:

> "What is this but declaring that the law in the states shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states, and, in regard to the colored race, for whose protection the Amendment was primarily designed, that no discrimination shall be made against them by law because of their color? Quoted from the last case in *Buchanan v. Warley*, 245 U. S. 60, 77, 62 L. ed. 149, 161, L. R. A. 1918C, 1201, 38 Sup. Ct. Rep. 16, Ann. Cas. 1918C, 1201. See *Yick Wo v. Hopkins*, 118 U. S. 356, 374, 30 L. ed. 220, 227, 6 Sup. Ct. Rep. 1064. The statute of Texas in the teeth of the prohibitions referred to assumes to forbid negroes to take part in a primary election the importance of which we have indicated, discriminating against them by the distinction of color alone. States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case."

In the case of *Manchester v. Mass.*, 139 U. S. 240, 35 L. ed. 159, in passing upon the right of the State of Massachusetts in the conservation of its natural resources to prevent fish being taken from the waters of the State, this court expressed doubt as to whether or not the State could discriminate between residents and non-residents.

In the very recent case of *Gong Lum v. G. P. Rice*, et al., decided November 21, 1927, ——U. S.——, 72 L. ed. 79, in passing upon the right of the State of Mississippi in denying a Chinese child the right to attend school provided for white children, your Honors were careful to predicate the announcement of the right of the State so to do upon the fact that there was no discrimination in the facilities used.

POINT V

SECTIONS 13 AND 19 OF THE SHRIMP ACT, AND SECTIONS 3, 23 AND 24 OF THE OYSTER ACT, AS ENFORCED AND CONSTRUED, VIOLATE THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

For all the reasons hereinbefore stated, we submit that the Acts in question, as enforced and construed, discriminate against interstate commerce, and place a direct burden thereupon. We refer, especially, to the Ferandeau Case, which so held.

POINT VI

SECTIONS 4, 13 AND 19 OF THE SHRIMP ACT, AND SECTIONS 3, 23 AND 24 OF THE OYSTER ACT, ARE IN CONTRAVENTION OF AND VIOLATE PARAGRAPH 1, SECTION 10, ARTICLE 1, OF THE CONSTITUTION OF THE UNITED STATES.

The proof established that Foster-Fountain Packing Company, Inc., plaintiff in error in Cause Number 768 was a Louisiana corporation, domiciled in New Orleans, Louisiana, and that its charter granted it the right to take, sell and export oysters from the State of Louisiana (Tr. 109). The same is true of the Sea Food Company, of Louisiana (Tr. 22). The limitation as to time of the operation of these charters has not expired, and we respectfully submit that such charters constitute contracts which could not be breached, and that the Acts in question have that effect, as to which we submit the following authoriies: *Russell v. Sebastian*, 233 U. S. 195, 58 L. ed 912; *Dartmouth College v. Woodward*, 4 Wheat. 518 4 L. ed. 629; *Miller v. People of N. Y.*, 15 Wall. 478, 21 L. ed. 98; *Chicago B. & Q. R. R. Co. v. Cutts, Attorney General*, et al, 94 U. S. 154, 24 L. ed. 94.

BRIEF ON BEHALF OF INTERVENING PETITIONERS

The record in-so-far as it affects these intervening petitioners shows the following:

1. That they are citizens of the State of Louisiana.

2. They are wholly dependent upon the oyster industry for a livelihood, knowing no other industry except a business which cannot support them.

3. They are prevented by the operation and effect of the law herein complained of from following their vocation in Louisiana.

4. While being denied, by the law complained of, of the right to fish and dispose of their oysters in Louisiana other citizens of Louisiana are granted this privilege. (record pages 29-30-31-32).

The only evidence before the court with respect to the above allegations in the bill of complaint was in full support of same (record page 84), and there was no material denial by the officials of the State of Louisiana of these allegations.

Therefore, we submit that these petitioners by the effect of the law complained of, particularly section 2 of said law, are denied the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States, in that the said section 2 as enacted is as follows: "that the right to catch and take, can, pack, shuck, or deal in or transport oysters from the waters of this state * * * * * is hereby granted to any bona fide resident of this state, to any firm or association composed of citizens or residents of this state or to any corporation domiciled in or originated under the laws of this state, having their factories or shucking plants or places of business

located within this state"; and they are further denied the equal protection of the law in the construction placed upon this act by the governing authorities of Louisiana who allow other citizens and residents to ship oysters without restriction from the state of Louisiana in interstate commerce for the purpose of sale to restaurants, dining cars and domestic users, etc. (record page 32), and in support of this contention we with respect call the court's attention to the following.

That the right to fish in the state of Louisiana is vested in any of its citizens, the state having control of wild animal life only for the purpose of acting as a trustee for those who are entitled to use same and for the purpose of conserving and preventing the destruction of same. Forham on Waters and Water Rights, page 150 and 158, *Martin v. Waddell*, 16 Peters 348, *Smith v. Maryland*, 18 Powell 71, *Burns v. Crescent Gun & Rod Club*, 41 So. 249. In *Smith v. Maryland*, Mr. Chief Justice Curtis on page 74 speaking as the organ of the court said:

> "Whatever soil below low-water mark is the subject of exclusive propriety and ownership, belongs to the State, on whose maritime border, and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory, before the declaration of independence. *Pollard Lessee v. Hagan*, 3rd. How. 212; *Martin v. Waddell*, 16 Peters, 367; *Den v. The Jersey Co.*, 15 How. 426.
>
> "But the soil is held by the State, not only subject to, *but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish*, as well shell as floating fist." *Martin v. Waddell*; *Den v. Jersey Co.*; *Corfield v. Coryell*, 4 Wash. R. 376; *Fleet v. Hagemen*, 14 Wend. 42; *Arnold v. Munday*, 1

Halst. 1; *Parker v. Cutler Milldam Corporation*, 2 Appleton (Me.) R. 353; *Peck v. Lockwood*, 5 Day, 22; *Weston et al v. Sampson, et al.* 8 Cush. 347. *The state holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. in other words, it may forbid all such acts as would render the public right less valuable, or destroy it altogether. This power results from the ownership of the soil, from the legislative jurisdiction of the state over it, and from its duty to preserve unimpaired those public uses for which the soil is held.*" (Italics ours)

And in the case of *Burns v. Crescent Gun & Rod Club*, 160 La. 1038, the point involved was the right of fishery in Irish Bayou, a navigable stream and Judge Breau, the organ of the court, said:

> "In the Acts for the admission of the States of Louisiana and Mississippi into the Union, it was declared that the River Mississippi and the navigable rivers and waters leading into the same or into the Gulf of Mexico shall be common highways and forever free." Act Feb. 20, 1811, c. 213, 32 Statute, 642.
>
> "The court enjoined any interference with the liberty of the residents of the State of fishery in Irish Bayou."

Therefore, a law which gives to a resident of a state and to certain corporations having factories, etc. in the state, the right to take fish or oysters from the waters of the state, but does not give this privilege to any citizen of that state is invalid. Citing *State of Mississippi v. Jim Hill*, 31 L. R. A. n.s. 491; *Charles Gustafson v. State of Texas*, 43 L. R. A. 16. In the latter case, Mr. Chief Justice Henderson, speaking for the court, said:

"In all the cases, so far as we are advised, it is held that navigable rivers and contiguous portions of the sea embraced within the territory belonging to the state, are the property of the state, that they belong to all the citizens thereof, and that every citizen has a right in common with every other citizen to take fish in such waters. (Authorities.) The last cited case (*Peck v. Lockwood*, 5 Bay. 22) was a case involving the right to take shell fish on land claimed by plaintiff. The facts were that plaintiff owned a tract of land fronting on the river, where the tide ebbed and flowed. At low tide the locus in quo was dry land, but, when the tide was in, it was covered by the flow of the sea. Plaintiff claimed proprietary rights in the locus in quo and defendant justified on the ground that at high water it was a part of the river or sea, and was open for the purpose of fishing, to all the citizens of the state. The court discussed a number of common-law authorities on the subject, and from them deduced the following: 'That the right to fish on the soil of another, when overflowed with the tide from the sea or arm of the sea, is a common right, though it flows on the soil of another.' As stated, however, there is no controversy on this point; that is, that the locus in quo in this case was the property of the state. Nor is it controverted that the state may properly regulate the use of all its property, but it is insisted that in granting privileges to use its public domain, whether of land or water, it must do so under the operation of the fundamental principle upon which our government is established, —that is, equality. All men when they form a social compact have equal rights and no man or set of men is entitled to exclusive separate public emolument or public services. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed. Mr. Cooley says on this subject (Cooley, Const. Lim. p.

485.): 'Equality of rights, privileges and capacities unquestionably should be the aim of the law;' But it is contended here that the right to take the oysters in the public waters of the state is a privilege which the state can bestow as it pleases; that it can lease or let its public domain on whatever terms it sees fit. We cannot assent to this proposition. It might be so in a kingly government, but not in a free government in which all are equal before the law, * * * * * The state has no right to discriminate against any citizen or class of citizens as to the enjoyment of its public domain. The state has no more right to authorize one class of its citizens, to rent or use its public lands. We do not believe it could be seriously contended that the state could authorize only taxpayers to rent its public domain of lands, to the exclusion of another class of its citizens who were not taxpayers. This would not only be a discrimination, but discrimination in favor of the rich against the poor. If the state could authorize its citizens who were taxpayers to fish, and inhibit its citizens who were taxpayers from fishing in its public waters, it could equally authorize its citizens who were not taxpayers to fish in such waters to the exclusion of those who were taxpayers. * * * * * The fact that it is class legislation qualifies the act, or that provision of it authorizing the granting of a license, and so renders it unconstitutional and void. We hold that the waters of the state, as well as all its domain of public lands, are equally open to all of its citizens upon the same terms and conditions, and that the attempt of the legislature to prohibit residents of the state who are not taxpayers, but who are willing to pay license tax, from fishing in the public waters of the state, is violative of those provisions of the Constitution before mentioned."

We therefore with respect submit that the facts in this case justify a holding of the court that these petitioners were denied the equal protection of this law of Louisiana, both by the necessary effect of the law itself, as well as from the manner of the enforcement of the law by the officials of the state of Louisiana charged with its enforcement. These petitioners were citizens of Louisiana, and while they resided in Biloxi, Mississippi, temporarily, it was only because this was the only point from which they could pursue their chosen avocation of fishing. There is no denial in the evidence of the fact that they were forced to select this as a point from which to conduct their fishing operations, nor is there any denial of the fact that they could not have successfully disposed of their catch at any point other than Biloxi, yet, both from the necessary effect of the act which did not give the right of fishing to all citizens but conferred this right only on resident citizens while giving the same right to any citizen who formed an association or to any citizen that was a corporation, these men were denied the rights granted to others by the law. Furthermore, we call to the court's attention, that there was no specific denial, but only a denial in general terms of the allegation that other citizens, regardless of the act itself, were engaged in shipping oysters from the state for purposes other than of manufacture without the state. The necessary effect of this act on the part of these officials in so construing the law was to prevent the petitioners from earning a living, although allowing this right to other citizens, and even though the court might construe the act itself as giving to the petitioners the right to fish, although we respectfully submit that this act in itself would proclude them from fishing in Louisiana as long as they were residing in another state, the overwhelming proof in this case shows that in the administration of the law these petitioners were denied rights accorded to other citizens of this state and for this reason the enforcement of this law should be enjoined. *Yick Wo v. Hopkins*, 118 U. S. 356.

We further call to the court's attention the fact that to these petitioners the question involved is most vital. That is not only this so with reference to petitioners themselves, but the record in the case shows that over one thousand other French families are likewise situated in Biloxi, Mississippi. That these people have been engaged in fishing or in the cane industry for generations past. That to them the deprivation of either of these rights would be a tragedy. From the force and effect of a decree of nature, from which they cannot appeal, they had been deprived of the right of following the work of making and gathering cane. Of necessity, knowing no other occupation but that of fishing, and being unable to secure this employment in their home state, they departed from the fatherland that for over one hundred years has sheltered them, to take up a temporary residence on a point on the Mississippi Coast from which they could again go into their native state and earn a livelihood. The fact of their temporary residence in Biloxi deprives them of none of their rights as citizens. Speaking in the stockyards case this court said that one of the inalienable rights of mankind was to earn a living and to follow their chosen vocation. This was the right of these petitioners and certainly the last one to deny them this right should be the governing authorities of that state which has nurtured them and which has been the home of their forefathers for over a hundred years. They are not only by the law complained of and by the manner and method of its enforcement deprived of the right granted by law to other citizens of the state, but from the undisputed testimony the enforcement of this law will deprive them of their right to earn a livelihood, and while they are so deprived and are prevented, both from the law and from its enforcement, from fishing for oysters, from dealing in oysters, from packing of oysters and selling oysters and contracting with any one to sell oysters or to take oysters out of the state of Louisiana for sale, at the same time no effort of conservation is thereby sought by the authorities

of Louisiana, nor is the future permanency of her fishing industry increased by the operation of this law, nor are any of the citizens of the state furnished with a greater or more abundant food supply, but on the contrary, without limit or restriction, the other residents of the state qualifying under the statute can take advantage of all of these rights and can drain the natural resources of the state until there remains not a vestige thereof.

And in exchange for the absolute primary right of earning a living that is denied to these petitioners because of this law and its enforcement, the only benefit that will accrue to Louisiana will be the canning and packing of these oysters in the state of Louisiana, with the benefit that might come therefrom to a select class of citizens who are engaged in this business.

We therefore respectfully submit that this law deprives these petitioners of substantial rights and privileges granted to other citizens and that the reason for the enactment of this law or the manner of its enforcement is not a reasonable one intended for the protection either of other citizens of the state of Louisiana, or for the increase of any necessary food supply or natural resources belonging to the people of the state of Louisiana, but on the contrary, is an arbitrary, unreasonable classification looking towards the coercion of citizens to engage in a particular industry in Louisiana which will have no effect whatsoever on limiting the catch of oysters in the state of Louisiana, or increasing the value of the natural resources to the people of the state. See *State v. Ferrandeau*, 130 La. 1035; *Gulf, Colorado & Sante Fe R. R. v. Ellis*, 165 U. S. 150; *Cotting v. Goddard*, attorney general, 183 U. S. 79.

POINT VII
EQUITY HAS JURISDICTION BY INJUNCTION TO PREVENT IRREPARABLE INJURY AND DAMAGE.

In each of these causes, Numbers 768 and 769, contracts were made between the respective appellants for the sale and transportation in the one case shrimp, the other oysters, from the State of Louisiana to the State of Mississippi.

It is undisputed that the defendants in error had and maintained boats, patrolling the waters of the State of Louisiana along the line, preparatory to enforcing the Acts, and that unless restrained, if plaintiffs in error, or either of them, had made any effort, or taken any step, toward the consummation of the contracts, or either of them, they would have been arrested, imprisoned, and the vessels and equipment seized for confiscation.

The evidence even established that the defendants in error were so aggressive and alert in the enforcement of the respective Acts that they stationed an inspector at Biloxi, Mississippi, for the purpose of ascertaining as to whether or not shrimp or oysters were being brought into the State for the purpose of being packed or canned (Tr. 84-85).

The evidence established beyond contravention that if the plaintiffs in error without first obtaining a restraining order had taken any step looking toward the consummation of the contracts in question, that they, their agents and servants, would have been arrested, the boats seized, and that they would have been subjected to very heavy penalties; that each day would have constituted a separate offense; that the fines were doubled for a second offense, and long terms of imprisonment were permissible under the Acts, and doubtless would have been imposed, and their vessels

and equipment were subject to forfeiture. In other words, unless the plaintiffs in error were able to obtain a restraining order and a temporary injunction, it would have been impossible for them to execute the contracts, or either of them, and if they had been prevented from executing the contracts, the vendor in each of said contracts would have been denied the benefit accruing to him from the sale; that the plants and factories of the vendee would have been closed down, the property rendered valueless. In fact, the industry at Biloxi, Mississippi, would have been broken up, several thousands of persons thrown out of employment, and irreparable injury and damage inflicted. It was a case where the appellants could have no adequate remedy at law. Unless they were entitled to the restraining order and interlocutory injunction, they faced utter ruin. The jurisdiction of a court of equity in such cases has been so thoroughly established as to be beyond question. The case falls exactly within the rule announced in Ex Parte Young, 209 U. S. 123, 52 L. ed. 714.

In the case of *Truax v. Raich*, 239 U. S. 33, 60 L. ed. 131, the facts and law are stated as follows:

> "Mike Raich (the appellee), a native of Austria, and an inhabitant of the State of Arizona, but not a qualified elector, was employed as a cook by the appellant William Truax, Sr., in his restaurant in the City of Bisbee, Cochise County. Truax had nine employees, of whom seven were neither 'native born citizens' of the United States nor qualified electors. After the election at which the act was passed Raich was informed by his employer that when the law was proclaimed, and solely by reason of its requirements and because of the fear of the penalties that would be incurred in case of its violation, he would be discharged. Thereupon, on December 15, 1914, Raich filed this bill in the District Court of the United States

for the District of Arizona, asserting, among other things, that the act denied to him the equal protection of the laws, and hence was contrary to the Fourteenth Amendment of the Constitution of the United States. Wiley E. Jones, attorney general of the State, and W. G. Gilmore, the county attorney of Cochise County, were made defendants in addition to the employer Truax, upon the allegation that these officers would prosecute the employer unless he complied with its terms, and that in order to avoid such prosecution the emloyer was about to discharge the complainant. Averring that there was no adequate remedy at law, the bill sought a decree declaring the act to be unconstitutional and restraining action thereunder.

"Soon after the bill was filed, an application was made for an injunction pendente lite. After notice of this application, Truax was arrested for a violation of the act, upon a complaint prepared by one of the assistants in the office of the county attorney of Cochise County, and as it appeared that by reason of the determination of the officers to enforce the act, there was danger of the complainants immediate discharge from employment, the district judge granted a temporary restraining order.

"The allegations of the bill were not contraverted. The defendants joined in a motion to dismiss uuon the grounds (1) that the suit was against the State of Arizona without its consent; (2) that it was sought to enjoin the enforcement of a criminal statute; (3) that the bill did not state facts sufficient to constitute a cause of action in equity; and (4) that there was an improper joinder of parties, and the plaintiff was not entitled to sue for the relief asked. The application for an interlocutory injunction and the motion to dismiss were then heard before three judges, as required by Sec. 266 of the Judicial Code (36 Stat. at L.

1162, chap. 231, Com. Stat. 1913, Sec. 1243). The motion to dismiss was denied and an interlocutory injunction restraining the defendants, the attorney general and the county attorney, and their successors and assistants, from enforcing the act against the defendant Truax, was granted. 219 Fed. 273. This direct appeal has been taken.

"As the bill is framed upon the theory that the act is unconstitutional, and that the defendants, who are public officers concerned with the enforcement of the laws of the state, are about to proceed wrongfully to the complainant's injury through interference with his employment, it is established that the suit cannot be regarded as one against the state. Whatever doubt existed in this class of cases was removed by the decision in Ex parte Young, 209 U. S. 123, 155, 161, 52 L. Ed. 714, 727, 729, 13 L. R. A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764, which has repeatedly been followed. *Ludwig v. Western U. Teleg. Co.*, 216 U. S. 146, 54 L. Ed. 423, 30 Sup. Ct. Rep. 280; *Western U. Teleg. Co. v. Andrews*, 216 U. S. 165, 54 L. Ed. 430, 30 Sup. Ct. Rep. 286; *Herndon v. Chicago, R. I. & P. R. Co.*, 218 U. S. 135, 155, 54 L. Ed. 970, 976, 30 Sup. Ct. Rep. 633; *Hopkins v. Clemson Agri. College*, 221 U. S. 636, 643-645, 55 L. Ed. 890, 894, 895, 35 L. R. A. (N.S.) 243, 31 Sup. Ct. Rep. 654; *Philadelphia Co. v. Stimson*, 223 U. S. 607, 620, 56 L. Ed. 572, 576, 32 Sup. Ct. Rep. 340; *Home Teleg. & Teleg. Co. v. Los Angeles*, 227 U. S. 278, 293, 57 L. Ed. 510, 33 Sup. Ct. Rep. 312.

"It is also settled that while a court of equity generally speaking, has 'no jurisdiction over the prosecution, the punishment of the pardon of crimes or misdemeanors' (Re Sawyer, 124 U. S. 200, 210, 31 L. Ed. 402, 405, 8 Sup. Ct. Rep. 482), a distinction obtains, and equitable jurisdiction

exists to restrain criminal prosecutions under unconstitutional enactments, when the prevention of such prosecutions is essential to the safeguarding of rights of property. *Davis & F. Mfg. Co. v. Los Angeles*, 189 U. S. 208, 218, 47 L. Ed. 778, 780 23 Sup. Ct. Rep. 498; *Dobbins v. Los Angeles*, 195 U. S. 223, 241; 49 L. Ed. 169, 177, 25 Sup. Ct. Rep. 18; Ex Parte Young, supra; *Philadelphia Co. v. Stimson*, 223 U. S. 621, 56 L. Ed. 577, 32 Sup. Ct. Rep. 340. The right to earn a livelihood and continue in employment unmolested by efforts to enforce void enactments should similarly be entitled to protection in the absence of adequate remedy at law. It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time, for any reason, or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employee has manifest interest in the freedom of the employer to exercise his judgment without legal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will."

But this case cannot be distinguished from that of *Hennington v. Palmer*, 255 U. S. 100, 65 L. Ed. 528. The opinion of Mr. Justice White is in the following language:

"The appellants, dealers in wearing apparel in the City of Jackson, Mississippi, filed their bill in the court below against the attorney general and subordinates charged by him with administrative duties under Sec. 4 of the Lever Act, to enjoin the enforcement against them of provisions

of that section. Their right to relief was based upon averments as to the unconstitutionality of the assailed provisions of the section, not only in substance upon the contentions which we have this day considered and disposed of in the L. Cohen Grocery Co. case (255 U. S. 81, ante, 516, 14 A. L. R. 1045, 41 Sup. Ct. Rep. 298), but upon other grounds as well.

"Without passing upon the question of unconstitutionality, the court dismissed the bill for the reason that the complainants had an adequate remedy at law, and the correctness of the decree of dismissal is the question now before us on direct appeal.

"As it is no longer open to deny that the averments of unconstitutionality which are relied upon, if well founded, justified equitable relief under the bill, and because the opinion in the Cohen case has conclusively settled that they were well founded, it follows that the court below was wrong, and its decree must be and it is reversed, and the case remanded for further proceedings in conformity with this opinion."

In the case of *Terrance v. Thompson*, 263 U. S. 197, 60 L. Ed. 255, the facts are stated as follows:

"Appellants brought this suit to enjoin the attorney general of Washington from enforcing the Anti-alien Land Law of that state, Chapter 50, Laws 1921, on the ground that it is in conflict with the due process and equal protection clauses of the 14th Amendment; with the treaty between the United States and Japan (February 21, 1911, 37 Stat. at L. 1504); and with certain provisions of the Constitution of the State.

"The appellants are residents of Washington. The Terrances are citizens of the United States and of Washington. Nakatsuka was born in Japan, of Japanese parents, and is a subject of the Emperor of Japan. The Terrances are the owners of a tract of land in King County which is practically adapted to raising vegetables, and which, for a number of years, had been devoted to that and other agricultural purposes. The complainant alleges that Nakatsuka is a capable farmer and will be a desirable tenant of the land; that the Terrances desire to lease their land to him for the period of five years; that he desires to accept such lease, and that the lease would be made, but for the act complained of. And it is alleged that the defendant, as attorney general, has threatened to and will take steps to enforce the act against the appellants if they enter into such lease, and will treat the leasehold interest as forfeited to the state, and will prosecute the appellants criminally for violation of the act; that the act is so drastic and the penalties attached to its violation are so great that neither of the appellants may make the lease even to test the constitutionality of the act; and that unless the court shall determine its validity in this suit, the appellants will be compelled to submit to it, whether valid or invalid, and thereby will be deprived of their property without the process of law and denied the equal protection of the laws."

"The attorney general made a motion to dismiss the amended complaint upon the ground that it did not state any matters of equity or facts sufficient to entitle the appellants to relief. The district court granted the motion and entered a decree of dismissal on the merits. The case is here on appeal from that decree."

The law is stated as follows:

"The unconstitutionality of a state law is not, of itself, ground for equitable relief in the Courts of the United States. That a suit in equity does not lie where there is a plain, adequate and complete remedy at law is so well understood as not to require the citation of authorities. But the legal remedy must be complete, practical, and efficient as that which equity could afford. *Boise Artesian Hot & Cold Water Co. v. Boise City*, 213 U. S. 276, 281, 53 L. Ed. 796, 798, 29 Sup. Ct. Rep. 426; *Walla Walla v. Walla Walla Water Co.* 172 U. S. 1, 11, 12, 43 L. Ed. 341, 346, 347, 19 Sup. Ct. Rep. 77. Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential, in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person who, as an officer of the state, is clothed with the duty of enforcing its laws, and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a Federal Court of Equity. *Kavanaugh v. Looney*, 248 U. S. 453, 456, 63 L. Ed. 354, 357, 39 Sup. Ct. Rep. 142; *Truax v. Raich*, 259 U. S. 33, 37, 38, 60 L. Ed. 131, 133, 134, L. R. A. 1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283, see also Ex parte Young, 209 U. S. 123, 155, 162, 52 L. Ed. 714, 727, 730, 13 L. R. A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764; Adams & Tanner, 244 U. S. 590, 592, 61 L. Ed. 1336, 1341, L. R. A. 1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; *Green v. Louisville & Interurban R. Co.* 244 U. S. 499, 506, 61 L. Ed. 1280, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917E, 68; *Home Teleph & Teleg. Co. v. Los Angeles*, 227 U. S. 278, 293, 57 L. Ed. 510, 517, 33 Sup. Ct. Rep. 312; *Philadelphia Co. v. Stimson*, 223 U. S. 621, 56 L. Ed. 570, 577, 32

Sup. Ct. Rep. 340; *Western U. Teleg. Co. v. Andrews*, 216 U. S. 165, 54 L. Ed. 430, 30 Sup. Ct. Rep. 286; *Dobbins v. Los Angeles*, 195 U. S. 223, 241, 49 L. Ed. 169, 177, 25 Sup. Ct. Rep. 18; *Davis & F. Mfg. Co. v. Los Angeles*, 189 U. S. 207, 217, 47 L. Ed. 778, 780, 23 Sup. Ct. Rep. 498.

"The Terraces' property rights in the land include the right to use, lease and dispose of it for lawful purposes (*Buchanan v. Warley*, 245 U. S. 60, 74, 62 L. Ed. 140, 160, L. R. A. 1918C, 210, 38 Sup. Ct. Rep. 16, Ann. Cas. 1918A, 1201), and the Constitution protects these essential attributes of property (*Holden v. Hardy*, 169 U. S. 366, 391, 42 L. Ed. 780, 790, 18 Sup Ct. Rep. 383), and also protects Nakatsuka in his right to earn a livelihood by following the ordinary occupations of life (*Truax v. Raich*, 239 U. S. 33, 37, 38, 60 L. Ed. 131, 133, 134, L. R. A. 1916V, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283; *Meyer v. Nebraska*, 262 U. S. 390, 67 L. Ed. 1042, 29 A. L. R. 1446, 43 Sup. Ct. Rep. 625). If, as claimed, the state act is repugnant to the due process and equal protection clauses of the 14th Amendment, then its enforcement will deprive the owners of their rights to lease their land to Nakatsuka, and deprive him of his right to pursue the occupation of farmer, and the threat to enforce it constitutes a continuing unlawful restriction upon and infringement of the rights of appellants, as to which they have no remedy at law in equity. And assuming, as suggested by the attorney general, that, after the making of the lease, the validity of the law might be determined in proceedings to declare a forfeiture of the property to the state, or in criminal proceedings to punish the owners, it does not follow that they may not appeal to equity for relief. No action at law can be initiated against them until after the consummation of the proposed lease. The threatened enforcement of

the law deters them. In order to obtain a remedy at law, the owners, even if they would take the risk of fine, imprisonment and loss of property, must continue to suffer deprivation of their rights to dispose of or lease their land to any such alien until one is found who will join them in violating the terms of the enactment, and take the risk of forfeiture. Similarly, Nakatsuka must continue to be deprived of his rights to follow his occupation as farmer until a land owner is found who is willing to make a forbidden transfer of land and take the risk of punishment. The owners have an interest in the freedom of the alien, and he has an interest in their freedom to make the lease. The state act purports to operate directly upon the consummation of the proposed transaction between them, and the threat and purpose of the attorney general to enforce the punishments and forfeiture prescribed prevents each from dealing with the other. *Truax v. Raich*, 239 U. S. 33, 37, 39, 60 L. Ed. 131, 133, 134, L. R. A. 1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283. They are not obliged to take the risk of prosecution, fines, and imprisonment and loss of property in order to secure an adjudication of their rights. The complaint presents a case in which equitable relief may be had, if the law complained of is shown to be in contravention of the Federal Constitution."

Another case directly in point is that of *Packard v. Banton*, 264 U. S. 140, 68 L. Ed. 596. The facts are stated as follows:

"This is a suit to enjoin the enforcement of a statute of New York (Laws 1922, chap. 612, p. 1566) alleged to be in contravention of the equal protection clauses of the Fourteenth Amendment. The statute requires every person, etc., engaged in the business of carrying passengers for hire in any motor vehicle, except street cars and motor vehicles subject to the Public Service Commission

Law, upon any public street in a city of the first class, to file with the state tax commission, either a personal bond with sureties, a corporate surety bond, or a policy of insurance in a solvent and responsible company in the sum of $2,500.00, conditioned for the payment of any judgment recovered against such person, etc. for death or injury caused in the operation or (by) the defective construction of such motor vehicle. The bill alleges that the rate of premium for the required policy is fixed by the insurance companies at $960.00; that the net income from the operation of the motor vehicle is about $35.00 a week, which would be reduced by the operation of the law to $16.50 per week, resulting in a confiscation of the earnings of appellant for the benefit of insurance companies. The state makes it a misdemeanor to operate such motor vehicles without having furnished the required bond or policy; and appellant avers that appellees, as prosecuting officers of the state, have threatened, and, if not enjoined, will proceed, to prosecute him, unless he complies with the law. The court below was constituted of three judges, under Sec. 266 of the Judicial Code, upon the return of the order to show cause a hearing was had, and the court denied a motion for an injunction pendente lite, and dismissed the bill for want of equity, without handing down an opinion."

The rule is announced as follows:

"Another preliminary contention is that the bill can not be sustained because there is a plain, adequate and complete remedy at law; that is, that the question may be tried and determined as fully in a criminal prosecution under the statute as in a suit of equity. The general rule undoubtedly is that a court of equity is without jurisdiction to restrain criminal proceedings unless they are instituted by a party to a suit already pending

before it, to try the same right that is in issue here. Re Sawyer, 124 U. S. 200, 209-211, 31 L. Ed. 402, 405, 406, 8 Sup. Ct. Rep. 486; *Davis & F. Mfg. Co. v. Los Angeles*, 189 U. S. 207, 217, 47 L. Ed. 778, 780, 23 Sup. Ct. Rep. 498.

"But it is settled that 'a distinction obtains and equitable jurisdiction exists to restrain criminal prosecutions under unconstitutional enactments, when the prevention of such prosecution is essential to the safe-guarding of rights of property.' *Truax v. Raich*, 239 U. S. 33, 37, 38, 60 L. Ed. 131, 133, 134, L. R. A. 1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283. The question has so recently been considered that we need do no more than cite *Terrace v. Thompson*, 263 U. S. 197, nate, 255, 44 Sup. Ct. Rep. 15, decided November 12, 1923, where the cases are collected and state our conclusion that the present suit falls within the exception and not the general rule. *Houston v. Des Moines*, 176 Iowa, 455, 464, 156 N. W. 883; *Dobbins v. Los Angeles*, 195 U. S. 223, 49 L. Ed. 169, 25 Sup. Ct. Rep. 18."

Other cases directly in point are:

Rhode Island v. Palmer, 252 U. S. 350, 64 L. Ed. 946, 40 Sup. Ct. Rep. 486; *Greene v. Frasier*, 253 U. S. 233, 64 L. Ed. 878, 40 Sup. Ct. Rep. 499; *Fort Smith & W. R. Co. v. Mills*, 253 U. S. 206, 64 L. Ed. 862, 40 Sup Ct. Rep. 526; *Hammer v. Dagenhart*, 247 U. S. 251, 62 L. Ed. 1101, 3 A. L. R. 649, 38 Sup. Ct. Rep. 529, Ann. Cas. 1918E, 724; *Wilson v. New*, 243 U. S. 332, 61 L. Ed. 755, L. R. A. 1917E, 938, 33 Sup. Ct. Rep. 298, Ann. Cas. 1918A, 1024; Ex parte Young, 209, U. S. 159, 52 L. Ed. 728, 13 L. R. A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764; *Gegiow v. Uhl*, 239 U. S. 3, 60 L. Ed. 113, 36 Sup. Ct. Rep. 2; *Waite v. Macy*, 246 U. S. 606, 62 L. Ed. 892, 38 Sup. Ct. Rep. 395; *American School v. McAnnulty*, 187 U. S. 94, 47 L. Ed. 90, 23 Sup. Ct. Rep. 33; *Morrill v. Jones*, 106

U. S. 466, 27 L. Ed. 267, 1 Sup. Ct. Rep. 423; *Bacon v. Rutland R. Co.* 232 U. S. 134, 58 L. Ed. 538, 34 Sup. Ct. Rep. 283; *Detroit Creamery Co. v. Kinnane*, 264 Fed. 851; *Santa Fe P. R. Co. v. Lane*, 244 U. S. 492, 498, 61 L. Ed. 1275, 1280, 37 Sup. Ct. Rep. 714; *Philadelphia Co. v. Stimson*, 223 U. S. 605, 56 L. Ed. 570, 32 Sup. Ct. Rep. 340; *Truax v. Raich*, 239 U. S. 33, 60 L. Ed. 131, L. R. A. 1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283.

In addition to the foregoing cases are the following cases, which are directly in point: *East v. VanDeman & Lewis Co.*, 240 U. S. 342, 60 L. ed. 679; *Tanner v. Little*, 240 U. S. 369, 60 L. ed. 691; *Pitney v. State of Washington*, 240 U. S. 387, 60 L. ed. 703; *Crane v. Johnson*, 242 U. S. 344, 61 L. ed. 352; *Hygrade Provision Co. v. Sherman*, 266 U. S. 495, 69 L. ed. 402; *Banton v. Belt Line Ry. Corp.*, 268 U. S. 411, 69 L. ed. 1020.

One of the most recent cases upon the subject is that of *Cline v. Frink Dairy co.*, 274 U. S. 445, 71 L. ed. 1146, in which the Court used the following language:

> "The first question is whether the practice and precedents in equity justified the granting of relief by injunction where one criminal prosecution had been begun and where many others, together with suits for fordeiture of corporate franchises, were threatened. The general rule is that a court of equity is without jurisdiction to restrain criminal proceedings to try the same right that is in issue before it; but an exception to this rule exists when the prevention of such prosecutions under alleged unconstitutional enactments is essential to the safeguarding of rights of property, and when the circumstances are exceptional and the danger of irreparable loss is both great and immediate. *Fenner v. Boykin*, 271 U. S. 240, 243, 70 L. ed. 927, 46 Sup. Ct. Rep. 492; *Packard v. Banton*, 264 U. S. 140, 68 L. ed. 596, 44 Sup. Ct. Rep. 257; *Hygrade Provision Co. v. Sherman*, 266 U. S.

497, 502, 69 L. ed. 402, 407, 45 Sup. Ct. Rep. 141; *Terrace v. Thompson*, 263 U. S. 197, 214, 68 L. ed. 255, 273, 44 Sup. Ct. Rep. 15; Ex parte Young, 209 U. S. 123, 52 L. ed. 714, 13 L. R. A. (N. S. 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764; *Davis & F. Mfg. Co. v. Los Angeles*, 189 U. S. 207, 218, 47 L. ed. 778, 780, 23 Sup. Ct. Rep. 498; *Dobbins v. Los Angeles*, 195 U. S. X223 236, 241, 49 L. ed. 169, 175, 177, 25 Sup. Ct. Rep. 18; Re Sawyer, 124 U. S. 200, 209, 211, 31 L. ed. 402, 405, 406, 8 Sup.Ct. Rep. 482.

"The affidavits in support of the bill were full in their showing that the district attorney by his action and threats had already greatly injured their properties and their business. They present a case in which the question of the validity of the act under which, if invalid, great injuries to properties and businesses are being unjustly inflicted should be promptly settled. We think the basis for equitable jurisdiction is made sufficiently clear. It is objected, however, that the injunction cannot be supported under the authorities, in so far as it is directed against actual proceedings pending in criminal court. One of the district judges below dissented from this part of the decree. Of course, the injunction is not only against actual prosecution but is also against a multiplicity of future suits and the threatened proceedings for forfeiture, by which the attorney general proposes to end the business of all the plaintiffs, and the objection would only lead to a narrowing of the decree. The majority in the district court were influenced by a remark of this court in *Davis & F. Mfg. Co. v. Los Angeles*, 189 U. S. 207, 218, 47 L. ed. 778, 780, 23 Sup. Ct. Rep. 498, in speaking of a bill to restrain invasion of rights of property by the enforcement of an unconstitutional law, in which the court said:

" 'It would seem that if there were jurisdiction in a court of equity to enjoin the invasion of property rights through the instrumentality of an unconstitutional law, that jurisdiction would not be ousted by the fact that the state had chosen to assert its power to enforce such law by indictment or other criminal proceeding.'

"This semble does not seem to have received the approval of the court in Ex parte Young, 209 U. S. 123, 52 L. ed. 714, 13 L. R. A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764, where it was said:

" 'It is further objected (and the objection really forms part of the contention that the state cannot be sued) that a court of equity has no jurisdiction to enjoin criminal proceedings, by indictment, or otherwise, under the state law. This, as a general rule, is true. But there are exceptions. When such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject matter of inquiry in a suit already pending in a Federal court, the latter court having first obtained jurisdiction over the subject-matter, has the right, in both civil and criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed. *Prout v. Starr*, 188 U. S. 537, 544, 47 L. ed. 584, 587, 23 Sup. Ct. Rep. 398. But the Federal court cannot, of course, interfere in a case where the proceedings were already pending in a state court. *Taylor v. Taintor*, 16 Wall. 366, 370, 21 L. ed. 278, 290, *Harkrader v. Wadley*, 172 U. S. 148, 43 L. ed. 399, 19 Sup. Ct. Rep. 119.'

"We, therefore, agree with the view of the dissenting judge that the injunction is too broad, in so far as it restrains proceedings actually pending, and that it must be accordingly modified."

This case falls within the rule announced in the foregoing cases.

The appellants not only were interested in the purchase, sale and transportation of the shrimp and oysters covered by the particular contracts shown in the record, but such sale and transportation formed a regular current of interstate commerce from the State of Louisiana to the State of Mississippi. They were prevented from executing such contracts by the defendants in error, and the entire movement of shrimp and oysters in such interstate commerce was directly interfered with. The appellants could not safely violate the law; they were subject to arrest for each separate offense, and were liable to very severe punishment, themselves, their agents and servants, and their property engaged in interstate commerce subject to confiscation. Without the temporary restraining order issued in the case they would either have had to desist from executing the contracts in question or submit themselves to the irreparable injury of frequent recurring arrest and the frequent recurring seizures of their property. We respectfully submit that the cases fall within the rule announced justifying equitable interference by injunction against the enforcement of the statutes of the State of Louisiana involved in this case.

It necessarily follows that if the statutes are unconstitutional in any of the particulars hereinbefore referred to no question of discretion in granting the interlocutory decree was involved. The interlocutory injunctions, as a matter of right, should have been granted. Such are the holdings of the foregoing cases.

When it comes to the question of the unconstitutionality of the statutes based on the alleged discriminatory enforcement thereof, we have endeavored to show the Court that there was no substantial disputed facts in respect thereto, and we now affirm that position.

That being true, and our position being correct under the authorities hereinbefore set out, the appellants were entitled as a matter of law to the interlocutory injunctions on account of the discriminatory construction placed by the defendants in error in the enforcement upon the statutes.

We refer the Court to the very recent case of *City of Hammond v. Schappi Bus Line*, decided by this Court November 21, 1927 ———U. S. ———, 72 L. ed. 56. In that case, the Court announced the rule, as we understand the opinion, that on an application for an interlocutory injunction on the grounds that a municipal ordinance was a burden upon interstate commerce, or was discriminatory, that where there was presented a serious question of restraint of interstate commerce, or where the affidavits conflicted in respect to discrimination, and there was no finding of fact made as to the fact of actual discrimination, and it further appeared that the complainant would sustain irreparable harm and damage, the interlocutory injunction should issue pending the final hearing of the case. The court used the following language:

> "The contentions made in the briefs and arguments suggest, among other questions, the following: Where there is congestion of the city streets sufficient to justify some limitation of the number of motor vehicles to be operated thereon as common carriers, or some prohibition of stops to load or unload passengers, may the limitation or prohibition be applied to some vehicles used wholly or partly in interstate commerce while, at the same time, vehicles of like character, including many that are engaged solely in local, or interstate, commerce are not subjected thereto? Is the right in the premises to which interstate carriers would otherwise be entitled, affected by the fact that prior to the establishment of the interstate lines, the city had granted to a local carrier, by

contract or franchise, the unlimited right to use all the streets of the city, and that elimination of the interstate vehicles would put an end to the congestion experienced? May the city's right to limit the number of vehicles, and prohibit stops to load or unload passengers, be exercised in such a way as to allocate streets on which motor traffic is more profitable exclusively to the local lines and to allocate streets on which the traffic is less profitable to the lines engaged wholly, or partly, in interstate commerce? Is limitation of the number of vehicles, or prohibition of stops to load or unload passengers, of carriers engaged wholly, or partly, in interstate commerce, justifiable, where the congestion could be obviated by denying to private carriers existing parking privileges or by curtailing those so enjoyed? Are the rights of the interstate carrier in the premises dependent, in any respect, upon the dates of the establishment of its lines, as compared with the dates of the establishment of the lines of the local carrier?

"These questions have not, so far as appears, been considered by either of the lower courts. The facts essential to their determination have not been found by either court. And the evidence in the record is not of, such a character that findings could now be made with confidence. The answer denied many of the material allegations of the bill. The evidence consists of affidavits and the pleadings. The pleadings are confusing. The affidavits are silent as to some facts of legal significance; lack definitemess as to some matters; and present serious conflicts on issues of facts that may be decisive. For aught that appears, the lower courts may have differed in their decisions solely because they differed as to conclusions of fact. Before any of the questions suggested, which are both novel and far-reaching in importance, are passed upon

by this court, the facts essential to their decision should be definitely found by the lower courts upon adequate evidence.

"There is an added reason why this court should not now make the findings of fact or rulings of law involved in these contentions. The court of appeals erred in assuming, as its opinion discloses, that the case had been submitted below as upon final hearing; and that the appeal before it was from a final decree dismissing the bill. The appeal was from the interlocutory decree denying the preliminary injunction; and the record discloses no later proceedings in the district court. The case was not yet ripe for final disposition by the Court of Appeals. Compare *Eagle Glass & Mfg. Co. v. Rowe*, 245 U. S. 275, 283, 62 L. ed. 286, 290, 38 Sup. Ct. Rep. 80. Findings and rulings if now made on the basis of the evidence presented at the hearing on the application for the temporary injunction, might be rendered of no avail by the presentation of other or additional evidence when the case comes on for final hearing.

"Under these circumstances, we deem it proper that, without costs in this court to either party, the decree of the Circuit Court of Appeals be modified by recognizing that the decree in the district court was only interlocutory, by directing an injunction pending the suit, and by remanding the case to the district court for proceedings on final hearing, with liberty to that court, among other things, to allow amendment of the pleadings."

Upon the question of discrimination it was not possible for the appellants fully to present their case by affidavits. They had no way to compel persons with relevant information to make an affidavit; they had no way to compel the express company to disclose the transportation of shrimp and oysters in the shells

passing beyond the state. We respectfully submit, however, that the affidavits offered by appellants in respect to the alleged discrimination in the enforcement of the act and the discriminatory construction placed thereupon, which amounted to a deprivation of appellants' constitutional rights, were sufficient to make out a prima facie case, and the interlocutory injunction should have been granted if there existed no other ground than the discriminatory construction placed upon the statute by the defendants in error charged with the enforcement thereof.

The three judge court in each case found that the plaintiffs in error would sustain irreparable harm, injury and damage, unless the status quo was preserved on appeal. No harm could be sustained by the State of Louisiana. The plaintiffs in error offered in their bill to pay every particle of the tax required by the laws of the State of Louisiana; they offered to comply with every portion of the law being purely conservatory; therefore, in view of the fact that the statutes of the state of Louisiana under review expressly authorized all shrimp and oysters to be shipped out of the state in unlimited quantities, without restriction or reservation, the only possible damage which the State of Louisiana could sustain would be the loss of taxes. The plaintiffs in error have not only offered to pay these taxes, but they have offered, and offer now, to impound them, in any court, and, in addition thereto, have given bonds for the faithful payment thereof.

As above stated, if your Honors agree with us in our construction of the Acts, and agree with us that the Acts do, in the particulars hereinbefore set out, burden interstate commerce, or deprive the appellants of any constitutional right asserted, then, as a matter of law, they are entitled to the interlocutory injunction. If, however, the rights of the plaintiffs in error should be held to depend entirely upon the question of the

discriminatory construction placed thereupon by defendants in error, even in that event, under the proof in this case, it was abuse of discretion on the part of the three judge court to refuse to grant the interlocutory injunction.

In the case of *Fordson Coal Co. v. Maggard*, C. C. A. (6th Cir.) 2 Fed. 708, the court held that sound discretion usually requires temporary injunction where irreparable damage shown and defendant can be protected by bond.

In the case of *City of Council Bluffs v. Railway Co.*, C. C. A. 9 Fed. 246, the court held that an interlocutory injunction should be granted where questions of law or fact are difficult, and injury to moving party irreparable if denied. In that case the court said:

> "Third. If the questions of law or fact presented to the court of original jurisdiction in a suit for an injunction are grave and difficult, and the injury to the moving party will be certain, great and irreparable, if the motion for the interlocutory injunction is denied, and the final decision is in his favor, while, if the decision is otherwise, and the injunction is granted, the inconvenience and loss to the opposing party will be inconsiderable, or probably may be indemnified by bond, the injunction usually should be granted. *Blount v. Societe Anonyme du Filtre, etc.*, 53 F. 98, 101, 3 C. C. A. 455; *Love v. Atchison, T. & S. F. Ry. Co.*, 185 F. 321, 332, 107 C. C. A. 403; and cases there cited; *American Smelting & R. R. Co. v. Bunker Hill & S. Min. Co.* (D.C.) 248 F. 172, 182; *Chew v. First Presbyterian Church* (D.C.) 237 F. 219, 222; *Magruder v. Belle Fourche Valley Water*

Users' Ass'n., 219 F. 72, 82, 135 C. C. A. 524; *Wilmington City Ry. Co. v. Taylor* (D.C.) 198 F. 159, 197, 198; *Carpenter v. Knollwood Cemetery et al* (CC) 188 F. 856, 857."

In the case of *Continuous Glass Co. v. Schmertz Glass Co.*, C. C. A., 153 Fed. 577, the court held that while a preliminary injunction is to be cautiously used by a court of equity, it should not be withheld if, in the exercise of sound discretion, it is deemed necessary to prevent injustice.

In the case of *Bushkirk v. King*, C. C. A., 72 Fed. 22, it is held that where an injunction is sought merely to preserve the status quo pending an action of ejectment by restraining defendant from cutting timber, plaintiff is not required to make out such a case as will entitle him to a decree on final hearing, and it may happen that an injunction is properly granted although the ultimate relief sought is finally denied.

In the case of *Samson-Murdock Co. v. Seaver*, 129 Fed. 761, the court held that on an application for an injunction pendente lite the court should consider the effect on both parties of the granting or refusal of the order, and where it appears that in either case great or irreparable injury will result to one or the other, the court will take the course which seems most conducive to justice to both parties.

In the case of *Wilmington Ry. Co. v. Taylor*, 198 Fed. 159, the following rule was announced:

> "On the point of equitable in contradistinction to legal relief there can be no question. The complainants are not obliged to wait for an indefinite period in order to obtain defensive relief in actions which may be brought in the state court for the recovery of the penalty of one hundred dollars per day, even if they could successfully defend without

first having had the order complained of declared invalid. They are entitled to the protection of this court against the enforcement of that order and their remedy is properly and, indeed, necessarily, in equity for injunctive relief. There is nothing for which the complainants could here maintain an action at law. It is not a question whether equity furnishes a more convenient remedy. It gives the only remedy, there being no legal remedy whatever in this court under the circumstances.

"On the question of the circumstances determinative of the propriety of granting or withholding preliminary injunctions there are certain well settled principles. The granting or refusal of a preliminary injunction, whether mandatory or preventive, calls for the exercise of a sound judicial discretion in view of all the circumstances of the particular case. Regard should be had to the nature of the controversy, the object for which the injunction is sought, and the comparative hardship or convenience to the respective parties involved in the awarding or denial of the injunction. The legitimate object of a preliminary injunction preventive in its nature, is the preservation of the property or rights in controversy until the decision of the case on a full and final hearing upon the merits, or the dismissal of the bill for want of jurisdiction or other sufficient cause. The injunction is merely provisional. It does not, in a legal sense, finally conclude the rights of the parties, whatever may be its practical operation under exceptional circumstances. In a doubtful case, where the granting of the injunction would, on the assumption that the defendant ultimately will prevail, cause greater detriment to him than would, on the contrary assumption, be suffered by the complainant, through its refusal, the injunction usually should be denied. But where, in a doubtful case, the denial of the in-

junction would, on the assumption that the complainant ultimately will prevail, result in greater detriment to him than would, on the contrary assumption be sustained by the defendant through its allowance, the injunction usually should be granted. The balance of convenience or hardship ordinarily is a factor of controlling importance in cases of substantial doubt existing at the time of granting or refusing the preliminary injunction. Such doubt may relate either to the facts or to the law of the case, or to both. It may equally attach to or widely vary in degree as between the showing of the complainant and that of the defendant, without necessarily being determinative of the propriety of allowing or denying the injunction. Where, for instance, the effect of the injunction would be disastrous to an established and legitimate business through its destruction or interruption in whole or in part strong and convincing proof of right on the part of the complainant and of the urgency of his case is necessary to justify an exercise of the injunctive power. Where, however, the sole object for which an injunction is sought, is the protection of property or legitimate business, or the maintenance of the status quo, until the question of right between the parties can be decided on final hearing, the injunction properly may be allowed, even though there be serious doubt of the ultimate success of the complainant. There is abundant authority in support of these views. *Russel v. Farley*, 105 U. S. 433, 438, 26 L. ed. 1060; *City of Newton v. Levis*, 79 Fed. 715, 25 C. C. A. 161; *Glasscot v. Lang*, 3 Myl. & C. 451, 455; *Hadden v. Dooley*, 74 Fed. 429, 431, 20 C. C. A. 494; *Great Western R. Co. v. Birmingham, etc. R. Co.* 2 Phil. Chan. 597; *Shrewsbury & Chester R. Co. v. Shrewbury R. Co.*, 1 Sim. N.S. 410, 426, 427, 432; *Denver & R. G. Co. v. United States*, 124 Fed. 156, 59 C. C. A. 579; *Buskirk v. King*, 72 Fed. 22, 18 C. C. A.

418; *Sanitary Reduction Works v. California Reduction Co.* (C.C.) 94 Fed. 693; *Southern Pac. R. Co. v. Earl*, 82 Fed. 690, 27 C. C. A. 185; *New Memphis Gas & Light Co. v. Memphis* (C.C.) 72 Fed. 952; *Indianapolis Gas Co. v. Indianapolis* (C.C.) 82 Fed. 245; *Georgia v. Brailsford*, 2 Dall. 402, 1 L. ed. 433. The application of these principles to the case in hand not only justifies but requires the awarding of the injunction. The only evidence before the court, aside from the bill and its exhibits, consists of exparte affidavits, which are inconclusive and to a certain extent conflicting on material points. The evidence, such as it is, preponderates on the side of the complainants. But the case is not ripe for final decision, and to render one now would be both premature and improper. A final decision should be reached only after a thorough, orderly and rigid investigation of the facts, in connection with the law, so conducted as to allow the application of the usual and most satisfactory test of truth, namely, the examination, cross examination and re-examination of witnesses, and also the production of books, papers and accounts. Further, the 'balance of convenience or hardship' here operates in favor of the complainants. While the granting of a preliminary injunction will temporarily require those to pay 'a straight five cent fare' who would prefer to save five-sixths of a cent on each fare by purchasing six tickets for twenty-five cents, the refusal of such injunction might seriously embarrass and possibly prove disastrous to the established business and property of the traction company. An interlocutory decree for a preliminary injunction may be prepared and submitted."

We respectfully submit that the three judge court committed error in failing and refusing to grant the temporary injunction pending the hearing of this cause.

In conclusion, we desire to state that the largest saw mill in the world is located in Louisiana, just south of the Mississippi line; that one of the largest paper mills in the world is in the same locality; both of these industrial plants draw their raw material a distance of nearly two hundred miles from under the shadow of the capitol of the State of Mississippi; they cannot operate twenty-four hours without the raw product from the State of Mississippi. If any one wanted to measure the commercial prosperity of Mississippi, it would not be necessary to examine the Mississippi banks or institutions; the State's barometer of commercial progress and prosperity will be found registering itself in the banks of the City of New Orleans. The cotton and the other raw materials from the State, in well-defined and long existing channels of commerce, flow into Louisiana, just as its streams pour into the ocean. The only raw product coming to Mississippi from Louisiana are the shrimp and oysters. Acts of this kind destroy that mutual feeling of good will which ought to exist between the people of two states; they invite retaliatory legislation; it cannot be doubted but that they restrain interstate commerce. The question presented is as to which rises the highest, that of the State of Louisiana to say where its natural resources passing into interstate commerce shall be manufactured, or the right of Congress, unhampered by state laws, to regulate interstate commerce.

We respectfully submit that the three judge court erred in the particulars hereinbefore set out; that the interlocutory order should have been granted in each case, and that the decrees appealed from should be reversed.

Respectfully submitted,
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ACT NO. 258 OF 1926

AN ACT

To declare all oysters and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the Oyster industry of the State of Louisiana, to provide penalties for violations of the provisions of this Act and to repeal all laws in conflict herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That all beds and bottom of rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets bordering on, or connecting with the Gulf of Mexico, in this State, and that part of the waters of the Gulf of Mexico, within the territorial jurisdiction of the State of Louisiana, including all oysters and other shell fish and parts thereof, grown thereon, either naturally or cultivated, and all oysters in the shells after the same shall have been caught or taken therefrom, shall be, continue and remain, the property of the State of Louisiana, until the title thereto shall be divested in the manner and from herein authorized; and shall be under the exclusive control of the Department of Conservation of the State of Louisiana until the right of private ownership shall vest therein as herein provided.

Nothing in this Act shall be so construed as affecting in any way the leasing of said waters for mineral purposes under the provisions of Act No. 30 of the Legislature of 1915, providing that if the mineral rights on any water bottom previously leased for oyster culture are granted by the State it shall be done only with the written consent previously obtained of the lessee of such water bottoms for oyster culture purposes, or by previous compensation of adequate amount paid to said oyster lessee by said mineral lessee for any and all damages sustained by said oyster lessee.

No grant, sale or conveyance of the lands forming the bottoms of water shall hereafter be made by the Register of the State Land Office, or by any other official, or by any subordinate political corporation. The rights of the owners or occupants of lands on the shores of any of the waters hereinbefore described shall extend to the ordinary low mark only and no one shall own in fee simple any bottoms of lands, covering the bottoms of water hereinbefore described.

Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State, to any firm or association composed of citizens or residents of this State, or to any corporation domiciled in, or organized under the laws of this State, having their factory or shucking plant or places of business located within the State, upon the terms and conditions and subject to the restrictions and regulations herein set forth, or under the authority of which may be imposed by the Department of Conservation of this State. No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for the cultivation and propagation of oysters for any of the above purposes. Any person, firm, association or corporation, violating any of the provisions of this section shall be liable to the penalties hereinafter provided. Any person, firm, or corporation, properly licensed to operate in the oyster industry in this State shall be permitted to employ such labor, resident or non-resident, as may be required and to employ such vessels and their crew, resident or non-resident, as may be required upon said vessels being properly licensed as hereinotherwise provided. This right to employ such non-resident labor or non-resident vessels shall be confined to the operation of any licensees as carried on within the State of Louisiana.

Section 3. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as cultch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw oyster shells beyond the foregoing requirements may be used for road building purposes, or ground for use as chicken feed or fertilizer, or any other purposes of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product it shall be lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified interest or property in the oysters so taken in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possess of such oyster shells.

In case of any infringment of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against

the wrongdoer, as may be proper; and in case of larceny or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon bedding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided.

Section 4. That the Department of Conservation shall have the power to lease to any resident, any firm composed of residents of this state, or to any corporation domiciled in or organized under the laws of this State, any and all water bottoms and natural reefs in the waters of this State, under the limitations herein stipulated.

No claim to any water bottoms, suitable for oyster culture, by any person, firm or corporation shall be valid or have any effect until adjudicated upon by a court of competent jurisdiction in a suit between the State and the claimant, and said claimant by virtue hereof may institute suit against the State in any Court of competent jurisdiction for the legal determination of the validity of his, their or its claim, without the necessity of a special legislative Act, authorizing such suit; and the effect of such judgment shall be limited to an adjudication of the question of title.

All leases of bedding grounds lawfully made in pursuance of any former statute or statutes, of the State of Louisiana heretofore enacted for the encouragement, protection, regulation and development of the oyster industry in this State, shall continue in full force and effect up to their expirations, provided the several leessees shall respectively pay the Department of Conservation, the rentals provided by law, and subject themselves to the regulations imposed by said Department; and all renewals of said leases, when made, shall stipulate as a matter of contract that the lessees will faithfully and fully comply with all of the provisions of this Act, and any and all amendments thereto and all rules and regulations which may be enacted thereunder by the Department of Conservation.

The owners of expiring leases shall have first right of renewal of their leases.

Section 5. That any firm, person or corporation, otherwise authorized herein so to do, desiring to lease a part of the bottom or bed of any of the waters of this State as provided herein, shall present to the Depatment of Conservation, a written application, together with a cash deposit of such amount as may be determined by the Department of Conservation, setting forth the name and address of the applicant, a reasonably definite description of the location and amount of land covered by water desired by the applicant and shall ask that the application be registered, that the water bottom be surveyed, that a plan or map of survey thereof be made and that the water bottom described be leased to applicant under the provisions of this Act. Thereupon the Department of Conservation shall register said application and shall order an examination to determine whether the bottoms applied for are leaseable or not, and the basis whereon the rental thereof shall be fixed. Should such area be found to be leaseable, a survey and plan shall be made at the expense of the applicant, at a fee to be fixed by the Department of Conservation. Said expense shall be paid by applicant to the surveyor in compensation for his services of making the survey, at the time when the survey is made. When applications are made by two or more persons for the same water bottoms, the applicant who files the first application shall have prior claim. The Department of Conservation shall require the bottoms of water areas leased to be as compact as possible, taking into consideration the shape of the body of water and the condition of the bottom, as to hardness or soft mud, which would render them desirable or undesirable for the purpose of oyster cultivation.

That in the event said application shall be favorably acted upon, and as soon as the survey has been made, the plan or map thereof filed with the Department of Conservation and the costs thereof paid by the applicant, the Department of Conservation may, at its option, execute a lease for such water bottoms to the applicant therefor at the rate of rental fixed by the Department of Conservation.

All leases made under the provisions of this Act shall stipulate as a matter of contract that the lessee will faithfully and fully comply with all the provisions of this Act and with the laws of this State and all rules and regulations of the Department of Conservation; such leases shall be executed in duplicate and a copy of the plan of survey shall be annexed thereto; one duplicate shall be delivered to the lessee and the other to be retained by the Department of Conservation and registered in a lease book kept for that purpose.

Said lessee, thereafter, shall enjoy the exclusive use of the water bottoms so leased and of all oysters, shells and cultch grown or placed thereon, subject to the restrictions and regulations herein made.

Lessees, under the supervision of the Department of Conservation, shall stake off and mark the leased water bottoms by such ranges, monuments, stakes, buoys, etc., as may be necessary to accurately locate and fix the limits of the water bottoms embraced in each lease, and shall further cause the area of each leased water bottom, and the name of the lessee, to be shown by signs, as may be determined by the Department of Conservation.

Failure on the part of the lessee to comply with the order of the Department of Conservation to so mark, for identification the bottoms leased by him, them or it, as above set forth in this section, shall subject the lessee to a fine not exceeding One Dollar ($1.00) per acre to be imposed in the discretion of the Department of Conservation.

Section 6. That all leases made under the provisions of this Act shall begin on the day the lease is signed, and shall continue for a period of fifteen (15) years thereafter, under such restrictions as are provided for herein, with the privilege of renewing such lease for a period of not exceeding ten (10) years, subject to and at such valuation as to rental by the Department of Conservation as conditions shall warrant, and in renewing any such lease, the same shall be made subject to the

provisions of this law and any amendments thereto and also subject to any rules and regulations established thereunder by the Department of Conservation, then in force.

The benefits of this Act and the restrictions thereof, shall extend to all leases of oyster bedding grounds heretofore made by the State through the Police Juries, the Oyster Commission, the Board of Commissioners for the Protection of Birds, Game and Fish, the Conservation Commission of Louisiana, and the Department of Conservation of Louisiana, and upon the termination of such original leases, such tenants shall have the right of renewing their leases, under the provisions and restrictions of this Act. The rent shall be paid in advance at the time of the signing of the lease up to the first day of October following, and annually thereafter, in advance, on or before the first day of October of each year, whether the lease be held by the original lessee or by an heir, assignee or transferee.

No person, firm or corporation otherwise authorized to do so by the provisions hereof, shall lease, hold or control more than one thousand (1,000) acres of said water bottoms, except that when said lessee owns or operates more than one canning plant in this State, he, they or it may be permitted to lease an additional five hundred (500) acres of water bottoms and reefs for a second plant, located within this State, an additional three hundred (300) acres for a third plant located within this State and an additional two hundred (200) acres for a fourth plant located within this State; provided, that should said lessee cease to operate any plant, by virtue of the erection or ownership of which he, it or they have been permitted to increase his, its or their lease holding acreage, such cessation shall operate a forefeiture of his, its or their lease upon such acreage as he, it or they may hold by reason of the erection or ownership of such discontinued plant; and any person, firm or corporation which holds or controls, or seeks or attempts to hold or control by partnership or otherwise, more than this amount of water bottoms by any scheme, agreement, understanding or combination whatsoever, shall forfeit, after due trial by a competent Court, the leases held by him, they or it, on any water bottoms of the State.

No license tax, other than those imposed by this Act, shall be levied or imposed by the State or any of its subordinate political corporations or municipalities. Each tenant leasing water bottoms under the provisions of this Act, shall, each year after the commencement of said lease, place under cultivation at least one-tenth of the leased barren water bottoms, and to that end each lessee of water bottoms shall be required to plant thereon sufficient of the raw oyster shells, herein reserved for such purposes, which fact shall be established by the certificate in writing of said lessee attested by two witnesses, to the effect that the requisite amount of oyster shells have been planted on said bedding ground to insure development of the oyster industry in this State, and as required by law, which certificate shall be filed with the Department of Conservation at such time as it may determine.

The Department of Conservation is hereby given the right to make such stipulations in the leases made by it as it shall deem necessary and proper to develop the industry, when not inconsistent with the provisions of this law.

Section 7. That all leases made in conformity with the provisions of this Act shall be heritable and transferable. They shall also be subject to mortgage, pledge or hypothecation and shall be subject to seizure and sale for debt, as any other property rights and credits in this State; this provision shall also apply to all buildings, betterments and improvements thereon. No such inheritance of transfer shall be valid or be of any force or effect whatever, unless evidenced by an authentic act, judgment or proper judicial deed registered in the office of the Department of Conservation in a book provided for that purpose. The Department of Conservation shall keep proper indexes, so that all original leases and all subsequent changes and transfers can be easily and accurately ascertained.

Section 8. That the failure of the tenant to pay the rent punctually on or before the first day of October of each year, or within thirty (30) days thereafter, shall ipso facto, and without demand or putting in default, terminate and cancel

said lease and forfeit to the Department of Conservation of Louisiana, all the works, improvements, betterments and oysters on said leased water bottoms, and the said Department of Conservation is authorized to at once enter on said water bottoms and take possession thereof; thereupon such water bottoms shall be open for lease to the highest bidder and the Department of Conservation, ten days thereafter, shall enter such termination, cancellation and forfeiture on its books and shall give public notice thereof, by publication in one local paper in the Parish where said leased water bottoms are located. The Department of Conservation may waive such termination, cancellation and forefeiture, provided the rent due with ten (10) per cent additional, be paid to it at any time before the said water bottoms are leased to another person, firm or corporation.

Section 9. That from and after the passage of this Act the rentals of all leased water bottoms and natural reefs made in conformity with the provisions of this Act, shall not be less than One Dollar ($1.00) per acre or any fraction of an acre per year, nor more than Five Dollars ($5.00) per acre or fraction of an acre per year, said amount to be determined by the Department of Conservation after the surveyor has reported on same as provided herein.

Section 10. That all vessels engaged in the oyster industry, before beginning operations, must first secure a license from the Department of Conservation of Louisiana, and for that purpose, the owner, captain or agent of said vessel, must present in writing an application setting forth the name and description of said vessel, the name and post office address of the owner and captain, the number of the crew, and such further data as the Department of Conservation shall deem necessary, and thereupon the Department of Conservation may register said vessel and issue the necessary license on payment of the costs thereof, provided that such license shall be issued only upon the application of any resident of this State, any firm or association composed of residents of this State, or any corporation domiciled in, or organized under the laws of this

State and herein otherwise authorized to engage in the oyster industry in this State. All licenses shall be graduated according to the oyster carrying capacity of each boat or vessel, which shall be ascertained under rules and regulations prescribed or to be prescribed by the Department of Conservation, on the basis of twenty (20) barrels to the ton, of carrying capacity and all vessels or boats are required to submit to the necessary survey for this license. A license tax of fifty cents per ton or fraction of a ton for each year is hereby levied on each vessel or boat engaged in the oyster industry in this State when of one (1) ton or more capacity, and a compliance with the provisions of these regulations shall be required of all vessels authorized by the Department of Conservation to engage in the freighting of oysters.

The name of any boat or vessel engaged in the oyster industry shall not be changed without the consent of the Department of Conservation.

These licenses shall always be subject to inspection by the officers of the Department of Conservation, and shall not be good for any other vessel or owner than that for which issued, without the consent of the Department of Conservation written across the face of the license. Licenses shall be issued by the Department of Conservation on license blanks which shall be furnished by it. All vessels engaged in the business of carrying of oysters to the port of New Orleans shall have in their possession, and shall display same upon arrival at said port, a manifest on blank forms, to be furnished by the Department of Conservation, giving all of the details of the cargo which said vessel is carrying on that particular trip.

The license year for licenses shall begin September 1st of one year and end August 31st of the next year.

The license provided by this section, being a license exacted by the State in the control of her own property, and the property of others over which State control is necessary, no parish or municipality shall impose any license on said industry

provided, however, that no license shall be issued to other than persons, firms or corporations owning or operating factories or shucking plants in this State, or dealing in raw oysters in this State. Applicants for license hereunder, otherwise authorized to operate in the oyster industry in this State shall enjoy the right to employ non-resident labor and non-resident vessels, as provided under Section 2 of this Act.

Section 11. That each packer, canner, commission man, dealer, firm or corporation, otherwise authorized under the provisions hereof to engage in the oyster industry, shall keep a record of all oysters purchased by himself or themselves, with the names of the parties from whom purchased, the quantity and the date. They shall also keep an itemized account of all oysters fished by themselves and by all boats controlled by them, and shall exhibit said accounts at all times to the Department of Conservation, or any of its authorized employees. On the first day of each month, each packer, canner, commission man, dealer, firm or corporation, shall make a return under oath to the Department of Conservation as to the number of barrels of oysters purchased and caught during the preceding month, and a severance tax of two and one-half (2½) cents per barrel, on each and every barrel of oysters canned, packed, purchased, caught or gathered from leased water bottoms, and a tax of three (3) cents per barrel, on each and every barrel of oysters canned, packed, purchased, caught or gathered from the natural reefs either for sale or consumption, is hereby levied and shall be paid to, and collected by the said Department of Conservation.

Inspectors of the Department of Conservation are authorized to enter upon any boat, or to enter any building, other than a domicile, where oysters are carried or stored and to inspect such oysters at all times.

In all of the operations of the Department of Conservation, the standard measurement of the barrel referred to herein shall be three and seventy-three hundredths (3.73) cubic feet, which approximately represents the cubic contents of three (3) bushels, or one barrel.

The Department of Conservation shall have the right to examine, inspect and audit the books, papers and memoranda of all persons, firms and corporations engaged in the oyster industry under licenses issued by said Department of Conservation.

All itinerant vendors of oysters at retail, traversing the waters of this State, shall be required, before beginning operations, to secure from the Department of Conservation a written permit so to do, which permit shall provide the place and manner wherein the severance tax on the oysters so fished or purchased for sale or resale, shall be paid to the Department of Conservation. All vessels operated for the purpose of the itinerant sale at retail of oysters as aforesaid, shall have on board the original permit aforesaid, which shall be subject to inspection at any time by any inspector of the Department of Conservation. A failure to obtain and possess such permit, shall authorize, at the option of the Department of Conservation, the condemnation and sale of said vessel and cargo, upon the institution of appropriate legal proceedings, as herein elsewhere provided.

The severance tax herein levied shall be payable to the Department of Conservation, within a period of thirty (30) days from the end of the month, without any penalty. Upon a failure of any person, firm or corporation to pay said severance taxes within said thirty (30) day period, a penalty of ten (10%) per cent per month, calculated upon the severance tax due, shall be levied and collected by the Department of Conservation, in addition to the severance tax, upon all in default in the matter of the payment thereof.

The levy or payment of a severance tax as herein provided shall not be construed as a grant to the person, firm or corporation against whom the same is levied or by whom the same is paid of any right of property or ownership in the shells of said oysters so severed, or the right to transport such oysters in the shell outside of the State of Louisiana.

Section 12. That it shall be unlawful for any person, firm or corporation to fish from the natural reefs of the waters of the State, for the purpose of sale, any oysters, between the first day of May and the 31st day of August, both dates included, of any year. It shall be further unlawful for any person, firm or corporation, between the dates aforesaid, of any year, to fish seed oysters from any natural reefs without previously making application for permission so to do to the Department of Conservation and after having received from said Department a written permit to that effect, which permit shall be issued at the discretion of the Department of Conservation and subject to the requirements of the bedding by such applicants of such quantity of dry oyster shells as cultch as shall be determined by the Department of Conservation. It shall be unlawful for any person, firm or corporation, or any canner, packer or shucker to can, pack or shuck any oysters between the first day of May and the 31st day of August, of any year, both dates included. The foregoing provisions shall not prevent any lessee of oyster bedding grounds, between the dates aforesaid, to cull his own oysters or to use the same for personal home consumption or to sell the same.

Section 13. That no person, firm or corporation shall engage in the business of canning oysters in this State until they shall first have secured from the Department of Conservation an annual license for which a charge of One Hundred Dollars ($100.00) each year is made by said Department of Conservation, for each steam box in use in such establishment. No person, firm, or corporation shall engage in the business of buying for resale, and shipping such oysters, raw or shucked, until they shall first have procured from the Department of Conservation an annual license for which a charge of Twenty-Five Dollars ($25.00), each year, shall be made by said Department of Conservation, when ten or more shuckers shall be employed in such establishment; when less than ten, and more than five shuckers are employed, the license shall be Fifteen Dollars ($15.00), per annum; when five or less shuckers are employed, the license shall be Ten Dollars ($10.00) per annum; and when no shuckers are employed and oysters are handled

in the shell for sale in the State for consumption within the State, the license shall be Ten Dollars ($10.00) per annum, when not more than ten thousand (10,000) barrels of oysters are bought and sold per annum. When more than ten thousand (10,000) barrels of oysters, and less than fifteen thousand (15,000) barrels are caught, bought or sold per annum, the license shall be Fifteen Dollars ($15.00) per annum. When more than fifteen thousand (15,000) barrels and less than twenty thousand (20,000) barrels are caught or bought and sold per annum, the license shall be Twenty Dollars ($20.00) per annum; when more than twenty thousand (20,000) barrels and less than twenty-five thousand (25,000) barrels are caught or bought and sold per annum, the license shall be Twenty-five Dollars ($25.00) per annum. No person, firm or corporation shall begin business without first securing a license. At the end of the year, sworn returns of oysters caught, bought and sold by each licensee shall be made by such licensee who shall pay the additional license shown to be due by him thereby.

Vessels purchasing for resale, oysters to make up a cargo, shall procure a license permitting the conduct of such business, which license shall be graded upon the tonnage of the boat employed and on the following basis, to wit:

Where the tonnage is less than five tons, the license shall be Ten Dollars ($10.00) per annum; where the tonnage is more than five and not exceeding ten tons, the license shall be Fifteen Dollars ($15.00) per annum; where the tonnage exceeds ten tons, the license shall be Twenty Dollars ($20.00) per annum; and every such vessel shall carry on board a suitable book, in which a daily record shall be made of all oysters purchased, giving the date of the purchase, the name of the seller, or vessel from which purchased, and the quantity of oysters purchased, which record shall at all times be open to the inspection of the officials of said Department of Conservation and extracts therefrom shall be furnished the Department of Conservation without cost, whenever required.

The license fees exacted hereunder by the Department of Conservation shall be due on the date fixed by the Department of Conservation, and those operating in the oyster industry shall secure the required licenses in advance. In the event of a failure on the part of any person, firm or corporation to secure the required license, a penalty of ten per cent (10%) of the license shall be charged by the Department of Conservation, for any delay not exceeding thirty (30) days in obtaining said license, a penalty of twenty-five per cent (25%) shall similarly be charged for any delay exceeding thirty days (30) and not exceeding sixty (60) days, and a penalty of fifty per cent (50%) of said license shall be similarly charged for any delay exceeding sixty (60) days, but not exceeding one hundred and twenty (120) days in the obtaining of said license.

In case of any delay exceeding one hundred and twenty (120) days in the obtaining of said license, when it should have been properly obtained, the Department of Conservation is vested with authority to refuse to issue said license for the balance of the season.

Section 14. That it shall be unlawful for any person, firm or corporation to stake off the water bottoms enumerated in this Act, or to bed oysters on said water bottoms without previously leasing same from the Department of Conservation, and after payment of the rental and fees provided herein, except that for emergency purposes in the matter of the preservation of a cargo the oyster fishermen may temporarily bed his cargo on unleased bottoms.

Section 15. That it shall be unlawful for any person, firm or corporation to take or catch oysters from any of the waters of the State, or to have such oysters in possession except under the rules and regulations of the Department of Conservation, and the onus shall be upon the accused to establish that any oysters in his or their possession were lawfully possessed. For the purposes of this Act, all oysters in possession of any person, firm or corporation, in this State, shall be deemed to be oysters fished from the waters of the State.

All oysters taken from the natural reefs of this State shall be culled upon their natural reefs as taken, and all oysters which measure less than three inches (3″) from hinge to mouth, and all dead shells shall be immediately replaced and scattered broadcast upon the natural reefs from which they are taken. No captain or person in charge of any vessel, and no canner, packer, commission man, dealer or other person shall have in his possession off the natural reefs, any natural reef oysters not culled according to the provisions of this Act. Any excess of over five (5) per centum of dead shells and oysters under the size prescribed herein in any cargo or lot of oysters shall be considered a violation of this act, and any officer of the Department of Conservation of Louisiana is authorized to cause to be counted the whole or part of said cargo or lot of oysters at the expense of such person or vessel, to determine said percentage when found necessary; no oysters under one inch in length from hinge to mouth shall be counted, and each half shell of proper size shall be counted as one. All unculled oysters in the possession of any canner, shucker or catcher, shall be presumed to be natural reef oysters and the onus shall be upon the accused to prove that they were fished from a private bedding or planting ground.

Under its supervision and direction the Department of Conservation may permit lessees of oyster bedding grounds to fish for bedding purposes from natural reefs unculled oysters as seed without charge and shall have authority to designate from what natural reefs said oysters may be fished and the quantity to be taken therefrom by any lessee, and therefore this foregoing limitation as to size shall not apply to seed oysters lawfully fished from the natural oyster reefs.

Section 16. That it shall be unlawful to use a dredge, or any means or implement other than hand tongs, in removing oysters from the natural reefs of this State, other than those leased as herein authorized, except that in bodies of water over a depth of eight feet (8′), or where, in the opinion of the Department of Conservation, the body of water regardless of depth, is declared to be too open and exposed to be fished with

hand tongs, the Department of Conservation is authorized to license the use thereon and therein of scrapers and dredges; the applicant for such license shall pay an annual license fee of Twenty-five ($25.00) Dollars for each sailing vessel operated by him, them, or it, using scrapers or dredges; and an annual license fee of Fifty ($50.00) Dollars for each power vessel operated by him, them, or it, using scrapers or dredges; said licenses shall be in addition to other licenses provided for in this Act, and shall be issued upon the express condition that the licensee shall not use said implement on any natural reefs in this State contrary to law. Such license shall be revoked upon any breach of the condition on which the same was issued.

The Department of Conservation, in its discretion, may license the use of dredges or scrapers in bodies of water less than eight feet (8′) in depth, upon the written application of those engaged in the oyster industry in the locality in which such body of water is situated.

The Department of Conservation may suspend the fishing of oysters altogether from any natural reef, or reefs, not leased by it, when such natural reef, or reefs, is, or are threatened with depletion.

Section 17. The lessees of propagating or bedding grounds shall have the right to use on such propagating or bedding grounds any implements or appliances they may desire. The Department of Conservation may require lessees to procure from it permits to use such implements and appliances, such permits to be issued without charge, and to be conditioned that such implements or appliances shall not be used on natural oyster reefs in the State, not leased, contrary to law. No implements or appliances however shall be used in any manner which will impair or destroy any water bottoms held by lessees.

Section 18. That it shall be unlawful for any person or persons, knowingly or wilfully, to take, carry away, or attempt to take or carry away, without the permission of the lessee, any oysters, shells, or cultch from the water bottoms of the Gulf of Mexico or the lakes, bays inlets, lagoons, rivers, bayous, or other waters tributary thereto or connected therewith, within the jurisdiction of the State of Louisiana, which said bottoms are, at the time of such taking, let or leased to any person, firm, or corporation under the laws of Louisiana, for the purpose of bedding, planting, propagating, or cultivating oysters.

It shall be unlawful for any person or persons, knowingly or wilfully to remove, break off, destroy or otherwise injure or alter any stake, monument, bounds, buoys, signs, or any other designation of any bedding or propagating ground placed thereon by the lessee, or to knowingly or wilfully move from any bedding ground any stake, monument, bounds, buoy, sign or mark or other designation placed thereon by the Department of Conservation. No person shall take a cargo or any part of a cargo of oysters in the shell out of the State, or shall fish, catch or gather, a cargo, or any part of a cargo, of such oysters with the intent to take them out of the State into any other State for any purpose.

All owners, and employers, of vessels engaged in the oyster industry in this State shall issue printed instructions to the captains and crews in charge of said vessels calling attention to the provisions of this section, and the same shall be duly executed before a competent notary by the parties interested, the original to be kept by the Department of Conservation and duplicate to be had in possession at all times by the captain of said vessel and shall be shown on demand of any officer or agent of the Department of Conservation. Lack of possession of such document on a vessel, or a refusal to show the same, shall be prima facie evidence that such paper does not exist.

Any one violating any of the provisions of this section shall be liable to the penalties hereinafter provided in this Act, and the imposition of said penalties shall not bar the prosecution and conviction of the wrongdoer under the criminal statutes of this State, now, or hereafter in force, in the event any such violation shall involve the commission of a misdemeanor or crime by such wrong doer.

Section 19. That the Department of Conservation shall give to each licensed vessel or boat a license number and the captain of said vessel shall at once cause such number to be painted on each side of the bow of such vessel or boat, in figures at least six inches high and of proportionate width in a color distinct and different from the body color of the hull; and shall also display said number on the peak of the mainsail of his vessel, and each figure on said mainsail shall be at least sixteen (16) inches high and of proportionate width and shall be six inches apart.

Section 20. That in all disputes as to boundaries between lessess of bedding grounds, the Department of Conservation is vested with full authority to settle the same, and its decision shall be subject to appeal to any court of competent jurisdiction.

Section 21. That the Department of Conservation shall acquire such boats, vessels and other property as may be necessary to regulate and supervise the work of the Department, and shall establish and maintain by means of armed vessels, the necessary patrol of the waters described in Section 1 of this Act with authority to use such arms and force as may be necessary to capture any vessel, or person or persons violating any of the provisions of this Act.

Section 22. That for the purpose of carrying into effect the provisions of this law, and the rules and regulations of the Department of Conservation, the Commissioner, inspectors and other employees of the Department of Conservation, and captains and members of the crews of all vessels in the service of

the Department of Conservation, are hereby constituted peace officers with the right when discharging their duties to carry arms concealed and with the power to arrest on view, without warrant, any one violating the provisions of the law, and it shall be the duty of all captains and crews to lend their assistance and the assistance of their vessels to any employee of the Department of Conservation in making arrests.

Section 23. Vessels, their tackle and apparatus, used in the illegal taking of oysters from the waters of this State shall be seized and taken into possession by the officers and inspectors of the Department of Conservation charged with the enforcement of the conservation laws, and shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred, the Sheriff being authorized to permit of the release of said vessel, or of said vessel and cargo, from seizure upon the owner thereof furnishing bond with good and solvent surety, or sureties, satisfactory to the Judge of the District Court having jurisdiction, in double the value of the vessel, its tackle and apparatus, and cargo if any, seized providing for the return of such vessel, its tackle and apparatus, in good condition to abide the judgment of the Court.

Such vessel shall be liable to forfeiture upon proceedings to that end being instituted in the name of the Department of Conservation by petition in an ordinary suit setting forth the cause of action and praying for the forfeiture of said vessel, its tackle and apparatus, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such vessel, with its apparel and apparatus, whereupon said vessel, with its apparel and apparatus, shall be sold at public auction by the Sheriff having jurisdiction, and the proceeds of sale of said vessel, its apparel and apparatus, less the cost of the seizure and of the proceedings, and of the keeping and sale of said vessel shall be paid into the State Treasurer to the credit of the Department of Conservation.

The cargo of the seized vessel, if perishable, shall be sold at once by the Sheriff, or the seizing officer, to the best advantage, and the proceeds of the sale disposed of in the same manner as the proceeds from the sale of seized vessel.

Should the owner of the seized vessel be able to prove to the satisfaction of the Court before which the case is tried that the captain, and crew, of said vessel had agreed in writing to comply with the provisions of Section 18 of this Act in every particular, and that it was not the intention of said owner to permit or allow any infraction of said provisions of the law, then, and in that event, the owner of said vessel shall be held blameless, the vessel released from seizure upon the payment of all costs, and the captain, person, agent, officer, crew or members thereof of said vessel, or by whom, or under whose direction said vessel was used in the illegal taking of said oysters in violation of Section 18 of this Act shall be adjudged guilty of violating the provisions of said section, and shall be sentenced to imprisonment in the parish jail for not less than ninety (90) days, nor more than two (2) years, in the discretion of the Court.

Section 24. That any person, firm or corporation, or common carrier, their agents and officers violating any of the provisions of this Act, where a punishment has not been otherwise provided, shall be guilty of a misdemeanor and shall upon conviction thereof pay all costs of the prosecution, and be fined not less than One Hundred Dollars $(100.00) nor more than Five Thousand Dollars ($5,000.00), or be imprisoned in the parish jail for not less than ninety (90) days, nor more than two (2) years, or both fined and imprisoned at the discretion of the Court, for each offense.

Upon a second conviction of any person, firm or corporation, or common carrier, their agents and officers, for violating any of the provisions of this Act, where a punishment has not been otherwise provided, all licenses issued to such person, firm or corporation, hereunder, shall be forfeited and it shall be the duty of the Judge of the District Court before whom such trial shall be had to declare and order such forfeiture as a part of his sentence.

Section 25. All fines collected under the provisions of this Act, through the courts, shall be paid into the State Treasury for the benefit of the Department of Conservation, for its use in upbuilding the natural reefs of the State, not leased by it hereunder, by planting thereon cultch or oyster shells.

Section 26. The term "Surveyor" as used in this Act shall be taken and construed to be the Survey of the Department of Conservation, who shall be a civil engineer, and a person well informed and experienced in oyster culture. He shall be appointed by the Commissioner of Conservation and have charge of the oyster resources of the State, under the direction of the commissioner of Conservation, who is authorized to fix his compensation.

Section 27. The funds provided for herein and arising from the collection of licenses, the severance taxes, bedding ground rentals, and other sources of income shall be collected by the Department of Conservation, and record made thereof and these funds when so collected shall be deposited in the State Treasury to the credit of the Department of Conservation for the use of said department.

Section 28. To the end that a valuable food product, a natural resource of the State, may be preserved for the benefit of the people of the State of Louisiana, the provisions of this Act shall be broadly construed to conserve this end. In the event that any section or portion of this Act shall be held for any reason to be invalid or unconstitutional, the remaining portions of this Act shall continue in full force and effect.

Section 29. That all laws or parts of laws contrary to or in conflict with the provisions of this Act be and the same are hereby repealed, provided that, in order to permit canning factories located beyond the limits of this State which have heretofore been permitted to take oysters out of the State for canning purposes to adjust their business to the conditions

imposed by this Act, the provisions of this Act, which require all oysters to be shucked or removed from their shells in Louisiana and the oyster shells left in Louisiana, shall not go into effect until after January 1, 1928, as to those oyster canners who shall have obtained from the Department of Conservation of Louisiana permits permitting such canneries until January 1st, 1928, to remove from the State Oysters in the shell for canning in factories located beyond the limits of the State, conditioned upon the right being reserved to the Department of Conservation of Louisiana to revoke any such permit upon the failure to be determined as a matter of fact after hearing by the Department of Conservation of Louisiana, that such permitee or licensee has failed to comply with the conditions imposed in such permit, and the Commissioner of Conservation shall be authorized to issue permits in accordance herewith, which permits shall expire January 1st, 1928.
Approved by the Governor: July 14, 1926.

A true copy:

JAMES J. BAILEY,

Secretary of State.

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IN THE

SUPREME COURT OF THE UNITED STATES

9

OCTOBER TERM, 1927.

NO. ~~768~~ 68

FOSTER FOUNTAIN PACKING COMPANY, Inc.,
and SEA FOOD COMPANY,
Appellants

Vs.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.
Appeal From the District Court of the United States for the
Eastern District of Louisiana.

NO. ~~769~~ 69

L. O. JOHNSON, JR., and SEA FOOD COMPANY,
TANAS HEBERT, ET AL.
Appellants

Vs.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.
Appeal From the District Court of the United States for the
Eastern District of Louisiana.

REPLY BRIEF FOR APPELLANTS

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

NO. 768

FOSTER FOUNTAIN PACKING COMPANY, INC., AND SEA FOOD COMPANY, APPELLANTS

VS.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

NO. 769

L. O. JOHNSON, JR., AND SEA FOOD COMPANY, TANAS HEBERT ET AL. APPELLANTS

VS.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

REPLY BRIEF FOR APPELLANTS

In presenting this brief to the court, we ask its indulgence while we pause to shortly reply to the foreword of appellee in the brief on behalf of the Conservation Department of Louisiana.

It is true that the decision of the Supreme Court of the United States in the case of Louisiana vs. Mississippi, referred to in appellee's brief, gave to the State of Louisiana a very valuable strip of land off the southern shore of Mississippi, and it is equally true that for years before that decision, and for years after this decision, the fishermen of the Gulf Coast of Mississippi were able to earn a livelihood by fishing in these waters, even as it is also true that the result of this commerce has proven vastly beneficial to the coast of Mississippi; in fact, it is true that the very happiness of thousands of these citizens of Mississippi depend upon their ability to engage in this type of commerce with Louisiana.

But while the decision in the case of Louisiana v. Mississippi deprived Mississippi of this territorial authority over the land adjudicated, still long before this case was decided a great Chief Justice of the United States, in Gibbons v. Ogden, decided that we have a right to engage in commerce in Louisiana; that this right emanates from the constitution of these United States and is beyond the power of a state to attack or to regulate; that this right is not only traffic, but it is intercourse and comprehends not only navigation but comprehends every species of commercial intercourse among states and nations.

Builded upon this great pronouncement is the present prosperity and peace of these United States. It has knit us together as a people and has corrected one of the greatest defects in the old articles of confederation. While it has enabled some states to draw heavily from the resources and wealth of other states, it has at the same time stood as a protector of the commercial welfare of each state and if, as charged in the foreword, this commerce has enriched Mississippi to a small extent, we call to the court's attention that the same commerce has enriched and upbuilded a great city at the mouth of the Mississippi River, which city constitutes a great part of the wealth of Louisiana.

Always standing in the pathway of local jealousy, it has likewise always stood as a protector and a defender of those who are endeavoring to carry out the cherished desire of the fathers of our constitution, that is, intercourse between the states, and at this time it comes with ill grace on the part of the state of Louisiana to ask for a denial to us in this court of this great right when at the same time the wealth that has been created throughout these United States under the protection of this law is being requested to be taxed so that the welfare, the commerce and the well-being of Louisiana may be protected from the encroachment of one of our greatest vehicles of commerce, the Mississippi River.

Appellants' Reply to Points I and II, Brief Dpartment of Conservation of Louisiana, Pages 1-22.

These two questions are so inter-connected that we feel

that our reply to the brief of appellee can be more logical were these two points to be answered at the same time.

We pause here to respectfully suggest to the court that this court has many times held that in deciding a question arising under the constitution of the United States of America, that its decision is confined to the case before it. That therefore the language used, though general in character, will be limited to the case at issue. Euclid Ohio v. Amber Realty Co. 272 U. S. 365; 47 Sup. Ct. Rep. 114; Tyson and Brother v. Banton, 273 U. S. 418; 47 Sup. Ct. Rep. 426. And for this reason we respectfully present to the court that the cases cited in support of points one and two in the brief of appellee not only are not controlling, but in fact, in no wise resemble the case at bar or the issue presented in it.

Taking up these cases in the order in which they are cited, we respectfully call to the court's attention Smith v. Maryland, 59 U. S. 270. This case decided the right of the state of Maryland to regulate the manner in which oysters were taken in the waters of Maryland for the purpose of preventing the destruction of these oysters and the Supreme Court holding that the state held these waters and the oysters contained therein for the benefit of its people; had a right to regulate the manner in which the oysters were fished from the bottom of the waters. There was in this case no element of interstate commerce nor was there any question of any citizens of the state being privileged above any other citizens.

In the case of McCready v. Va. 94 U. S. 391, the question before the court was the right of Virginia to deprive

a non-resident and one not a citizen of the use of the oyster bottoms of the waters of Virginia. There was not only in the case no element of interstate commerce, or of the deprivation of one citizen of the state of rights given to other citizens, but in deciding the case this court expressly decided that the planting of oysters was on the bottom of the waters of Virginia was cultivation and had no relation to commerce.

In the case of Manchester v. Mass., 139 U. S. 240, the question before the court was the right of Massachusetts to regulate the taking of fish in the waters over which it held sovereignity. The law attacked gave no right to citizens of Massachusetts over citizens of any other states or country and the question decided by this court was simply that the state could exercise its authority by regulating the manner in which fish were taken for the purpose of conserving its natural resources, but in deciding the case, the court expressly held that not only was there no question of interstate commerce involved, but that no right given by the law to its own citizens was greater than the right given the citizens of other states; however, the court expressly refrained in this case from ruling as to whether or not the citizens of any state have a right to fish for swimming fish in the waters of other states, and this question is yet an open one in the forum of the court.

In the case of Geer v. Conn., 161 U. S. 519, there was one question before the court that was: "Can a state prevent its wild animal life, after being killed, from being shipped out of the state in order that the wild life may be preserved to the people of a state as a food supply for its

citizens?" And, in deciding this case, Mr. Chief Justice White distinctly stated that this law only remotely affected interstate commerce, and also called attention to the fact that there was a difference between internal state commerce and interstate commerce, using the following language:

> "Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the state, under the provisions in question, created internal state commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce, and therefore under the control of the constitution of the United States. The distinction between internal and external commerce and interstate commerce is marked, and has always been recognized by this court."

The case of Abby Dodge v. U. S., page 223 U. S. 166, involved a matter differing so much from the case at bar, in our opinion decides no question that could affect the decision in this case, and the case of Gratz v. McGee 258 Fed. 335, merely decided that the state of Missouri was the owners of clams at the bottom of navigable streams within her borders. This holding is no wise challenged by us in this proceedings.

In the case of LeCoste v. Department of Conservation, 263 U. S. 545, the question presented and decided was the right of the state of Louisiana to levy a severance tax as a requirement preceding the divesting of the title of the state to wild animals. This court merely decided that it had this right and that it could establish a system of col-

lecting this tax, even though the skins of the animals had been received by a distributor, but in deciding this case Your Honors were very careful to call to the attention of the litigants that the case was not decided on the question of the police powers of a state to condition the removal of wild game from the state and the limitation on this power by reason of the commerce clause of the Constitution, using the following language:

> "Whether the tax here involved might be upheld by virtue of the power of the state to prohibit, and therefore to condition, the removal of wild game from the state, we do not now consider; but dispose of the case upon other grounds. The commerce clause (article 1, section 8, clause 3) confers on Congress power to regulate interstate and foreign commerce, and therefore such power is impliedly forbidden to the states. "Even their power to lay and collect taxes, comprehensive and necessary as that power is, cannot be exerted in a way which involves a discrimination against such commerce." Pennsylvania v. West Virginia, 262 U. S. 553, 596, 43 Sup. Ct. 658, 67 L. Ed. 117, and cases cited: Kansas City Railway v. Kansas, 240 U. S. 227, 231, 36 Sup. Ct. 261, 60 L. Ed. 617; Brimmer v. Rebman, 138 U. S. 78, 82, 11 Sup. Ct. 213, 35 L. Ed. 862; Elmer v. Wallace, 275 Fed. 86, 90; State v. Ferrandou, 130 La. 1035, 1041, 58 South. 870."

Citing with approval, the case of State v. Ferrandou, 130 La. page 1035, in which case the Supreme Court of Louisiana, speaking through Mr. Justice Monroe, decided that a law similar to the law in question here was unconstitutional because of its attempted encroachment upon inter-

state commerce. We now pass to the question of how far a state may regulate and control the taking, subsequent use and property rights that may be acquired in shrimp, oysters and other fish, calling to the court's attention that in the law attacked here, that is, in both the oyster law and the shrimp law, no attempt is made by the state of Louisiana to conserve to its people by means of the sections of the law complained of, either the shrimp or the oysters as a food supply, or the heads and hulls of shrimp and/or the shells of oysters as a fertilizer, clutch or road building supply, and in ordre to present this question so as to differeniate it from the case of Geer v. Conn., supra, which is relied upon by the appellee, we present to Your Honors the following:

In the Geer case, the state of Connecticutt, through its legislature not only said in words that grouse were a valuable food supply to its people, but should be conserved for them but this was the effect of the statute enacted by the legislautre. It absolutely prevented any part of the bird from passing out of the state and effectually conserved it for the sole use of the people of Connecticut. Now, may it please Your Honors, what does the shrimp and oyster act do? What is the effect of these laws in conserving to the people of Louisiana anything of value to them as a food or a natural resource?

We stop here and call to the court's attention that the court will not be bound by the name that is given a law by a state legislature, or the mere declaration, as this is not conclusive upon the court, but when attacked it be-

comes a question for judicial determination. Tyson and Brother v. Banton, 47 Sup. Ct. Rep. 426; 272 U. S. 418.

Therefore, this court will look through the fine words with which the two laws complained of are clothed, and will examine into the actual result that may be achieved from the enforcement of these laws. We therefore, say that the sections of the laws complained of by themselves support the construction placed on the laws by the appellant and the evidence supporting the allegations of the bill of complaint with reference to the intent of the law. Analyzing the shrimp law, we find that provided a license is obtained, which it is undisputed that appellants applied for, and providing a severance tax per barrel is paid on the shrimp, it being undisputed that tender of this tax was made, that any resident of Louisiana, any firm or association composed of residents of Louisiana, or any corporation domiciled in or organized under the laws of Louisiana, operating a canning and packing factory or drying platform in Louisiana, can take, these shrimp from the waters of the state in unlimited quantities. (Record page 23.) If these shrimp are hulled, the same may be shipped from the state of Louisiana without restriction or reservation (record page 29) and after the hulls and heads have been manufactured into fertilizer or chicken feed the same may be shipped from Louisiana without restriction or reservation, and we right here call to the court's attention the affidavit of R. L. Colson (record page 127) which was introduced by appellant and shows that all of the hulls conserved in Louisiana were shipped out of the state in interstate commerce.

The effect of the sections of the statute complained of does not prevent extraordinary quantities of shrimp from being taken out of the waters; it does not require these shrimp to be used in Louisiana for all of the eatable portion can be shipped out of the state; it does not require that the by-products be used in Louisiana for all of it can be shipped out of the state, and in no wise, does it touch upon the question of conservation and preservation of the natural resources for the people of Louisiana or assist the people of Louisiana in utilizing these fish as a source of food. Its one and sole object is to utilize these shrimp as an object of commerce, looking always beyond the borders of the state and yet, at the same time, to burden, control and regulate this commerce by compelling its citizens to pack and clean the shrimp under disadvantages in Louisiana.

Taking up the oyster law, we find that provided these oysters are caught by a resident of the state, or a firm or association composed of citizens of residents of the state, or by a corporation domiciled in or organized under the laws of the state, having their factory or shucking plant or places of business within the state, that these persons after they have taken the oysters from the shell can, first, ship every oyster in Louisiana from the state of Louisiana. Second, and after the shell has been ground into chicken feed or railroad ballast or road building materials, can ship every shell in Louisiana out of the state, and furthermore, can do this without restriction as to the amount of oysters that they take from the public reefs and even though certain citizens of Louisiana, that is, corporations domiciled in Louisiana, composed of citizens of Louisiana, are pre-

vented from engaging in this traffic, unless they own a packing plant or shucking plant in the state, any of the other persons more favored by this law can import unlimited numbers of non-resident laborers into the state for the purpose of assisting them in destroying the resources of the state. (See original brief page 271.) The evidence bears out this fact as the proof offered shows without dispute or denial by the appellee that ninety-five per cent of the oysters themselves, all of the shells used for chicken feed and vast quantities of the shells used for railroad ballasts and road building materials are shipped out of the state. Therefore, the law does not assist in regulating the amount of oysters taken from the public reefs; it does not conserve to the people of Louisiana either the oysters as a food supply or the shells as chicken feed or railroad ballasts, nor does it even give to the citizens generally the exclusive right to fish and catch oysters, it only denies to certain persons this right.

We therefore respectfully suggest to the court that the question of preserving a food supply that was presented in the case of Geer v. Conn. supra., the question of regulating and preserving wild animal life, by requiring a tax to be paid, which was presented in the case of LeCoste v. Department of Conservation, supra. is not presented here. We make no argument that a state has not a right to preserve for its people wild game as a food supply, nor do we attempt to say that it has not the right to regulate the manner in which game shall be taken, to tax the taking of this game, or to do any act that will necessarily increase and conserve this food supply, but we do think that a state

cannot inject into interstate commerce the product of its wild life and then attempt to regulate and burden this commerce. The sections of these laws complained of have but one effect only, that is, to require a person, whether a resident or non-resident of Louisiana to can or pack the shrimp and oysters in Louisiana, even though by so doing the value is lessened and a greater burden is placed upon the citizens of other states, who receive the shrimp and oysters through the medium of interstate commerce. This we say that the state of Louisiana cannot do.

In the decision relied upon by the appellee, that is, Geer v. Conn. supra., LeCoste v. Conservation Department and McCready v. Va., the court, we believe, has gone the very limit to uphold the ownership of wild life by a sovereign state and its right to condition the traffic in this wild life, and in no one of these cases has the court intimated that it would yield to this right, even though it affected interstate commerce, but on the contrary the philosophy running through each decision is that there being two species of commerce, internal commerce and external commerce, when a state says to its citizens that you can take this game and use it in internal commerce and it is dealt in and bought and sold by its citizens with the knowledge that this traffic is confined to internal commerce, then no complaint can be made of the enforcement of a law preventing its shipment beyond the confines of a state.

As in the warning given in the LeCoste case, this court has always called to the attention of the litigants that even the most necessary and vital powers of a state and its most

precious right shall yield to the commerce clause, yet in the case at bar, we find that in the very beginning of this law the legislature of Louisiana gave its citizens and the citizens of other states a right to traffic in shrimp and oysters in interstate commerce; it gave them a right to traffic in the hulls and heads of shrimp and the oyster shells in interstate commerce, and the evidence goes to show that the sole purpose and thought of catching these oysters and shrimp is that they may be injected in interstate commerce.

We therefore respectfully submit to the court that the state of Louisiana cannot enjoy all the fruits that arise from its dealings with its neighbors; from its intercourse with its neighbors; from its commercial relations with its neighbors regarding these shrimp and oysters, and at the same time, burden and regulate this intercourse and commerce for if one has a right to ship and dispose of goods in interstate commerce, the right is given to him at the same time of choosing the most reasonable and economical manner of carrying on this commerce. The state of Louisiana may have the right to keep all of its oysters and shrimp within its borders; it may have the right to prevent any but citizens and residents from catching or selling these oysters and shrimp, but when it grants the privilege of catching and selling these shrimp as indiscriminately as is granted in the sections complanied of of the law attacked, then it cannot condition this right with an unconstitutional restriction. Hanover Fire v. Carr. 71 L. Ed. 372; 272 U. S. 494.

We therefore suggest to the court, that there are limits to the condition which a state can place upon the taking or

use of its fish and other wild life. It may use this power to conserve a food supply; it may use this power to regulate the manner of taking the game or fish; it may use this power to obtain a tax before the title is divested, as in the LeCoste case; or it may use this power to guarantee its people an ample supply of such wild life for food, but it cannot, under the guise either of its sovereign proprietorship or police power, interfere with commerce.

Right here, we call to the court's attention the sound logic of Judge Monroe in the opinion delivered in the case of state of La. v. Ferrandou, 130 La. 1035. This case involved the construction of Section 1 of Act No. 189 of 1910, which section is set out at length in the original brief of appellant. An examination of this section reveals that it is the same law, having the same effect of the sections of the two laws complained of in this case. If we take from the sections complained of in the laws attacked the words in which it is dressed, which words were taken from decisions of this and other courts when used by these courts in the preservation of entirely different rights from those claimed by the state of Louisiana and tear from it the subterfuge with which it is surrounded, we find that the law of 1926 is in substance the law of 1910. We find that the sections of the two laws attacked from the only reasonable construction that can be given these sections, as well as from the admitted construction given these laws by the appellee herein, seek to do one thing, that is, to compel the canning and packing of shrimp and oysters in Louisiana, even though it is the idea, thought and intention of the

state of Louisiana to inject these shrimp and oysters into interstate commerce.

Justice Monroe in construing this law, and we submit to the court that in-so-far as his construction of police power of the state is concerned, that this construction is binding on the court (Dorchy v. Kansas, 47 Sup. Ct. Rep. 8; 272 U. S. 306) said:

> "There can be no question, as it appears to us, that this is to impose a regulation upon interstate commerce (those who buy and sell and ship being engaged in that business, as well as the carriers, who merely transport their goods), for it is to lay an embargo upon the trader who may wish to ship a limited number of oysters, to be packed and canned elsewhere, whilst permitting another to ship an unlimited number, which have been packed or canned within the state, for any other purpose whatever. The only remaining question is whether such regulation is permissible, as incidental to the object which it is designed to accomplish. And that question, we think, must be answered in the negative.
>
> The states, for the enforcement of their quarantine and inspection laws, the right to enforce which is reserved to them by the constitution, may impose conditions which operate as regulations of interstate and foreign commerce; and so, in the legitimate exercise of their police power, which is a term of wide significance; but we know of no instance in which it has been held that a state may regulate such commerce merely that its revenues may be increased.

> "The right of a state to prohibit the possession, during a closed season, within its borders, of game birds, taken in other jurisdictions, was a question upon which the courts differed, until it was finally settled by an act of Congress authorizing the exercise of such power. People ex rel. Hill v. Hesterberg, 184 N. Y. 126, 76 N. E. 1032, 3 L. R. A. (N. S.) 163, 128 Am. St. Rep. 528, 6 Ann. Cas. 353. The right of a state to prohibit, during an open season, the exportation of such birds, killed within its borders, was decided in the affirmative in Geer v. State of Connecticut, 161 U. S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793, and it was there held that:
>
> "'Although the killing of game and its sale within the state are allowed, it does not thereby necessarily become the subject of interstate commerce in the legal meaning of those words.'"

The prohibition was, however, general, and the court, additionally, held that:

> "The police power of the state to preserve game birds, as a valuable food supply for its people, justifies a statute prohibiting the transportation of such birds beyond the state, even if interstate commerce may be remotely affected."

Here, the apparent purpose is not to preserve a valuable food supply, but to secure to those so engaged, in this state, a monopoly of the business of packing and canning Louisiana oysters, thereby increasing the assessable property and revenues of the state.

In McCready v. Virginia, 94 U. S. 391, 24 L. Ed. 248, Waite, C. J., said:

> "The precise question to be determined in this case is whether the state of Virginia can prohibit the citizens of other states from planting oysters in Ware River, a stream in that state where the tide ebbs and flows, when its own citizens have that privilege. * * * There is here no question of transportation or exchange of commodities, but only of cultivation and production."

In Turner v. state of Maryland, 107 U. S. 38, 2 Supt. Ct. 44, 27 L. Ed. 370, a statute of the state of Maryland, providing for the packing and inspection, or marking without inspection, of tobacco, grown in that state, was held not to be in contravention of the commerce clause of the constitution of the United States; but the statute was general in its application and did not undertake to regulate shipments of tobacco with regard to the purpose of the shipper or consignee.

On the other hand, in Robbins v. Taxing District, 120 U. S. 489, 7 Sup. Ct. 592, 30 L. Ed. 694, it was held that (quoting from the syllabus:)

> "The negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce."

The negotiation, therefore, in Mississippi, of the sale of oysters, which are in Louisiana (and being lawfully sold there in open market), for the purpose of introducing them into Mississippi, is interstate commerce, and a condition, imposed by the law of Louisiana, that one buyer, in Mississippi, shall have his oysters shipped to him provided he

intends to make this use of them, and another buyer may have his shipped, provided he intends to make that use, is a regulation of that commerce, within the law, as we understand it, vesting such power of regulation in Congress; nor do we think that, as applied to this case, it affects the discriminating character of the regulation, that the oysters were bought in New Orleans, by defendant, and shipped by him to the canning company, in Biloxi, for which he purchased, or to which he sold them.

In Brimmer v. Rebman, 138 U. S. 78, 11 Sup. Ct. 213, 34 L. Ed. 862, it was held that:

> "A state cannot, under the guise of exerting its police powers, or of enacting inspection laws, make discriminations against the products and industries of its own or of other states.
>
> "Now can a state, with reference to person engaged in interstate commerce, make discriminations in favor of those who patronize its industries and those who patronize the industries of other states."

We therefore respectfully urge upon the court that there are limits to which a state can go in regulating and controlling the taking, subsequent use and property rights of its natural resources; that this limit has been passed by the state of Louisiana in its enactment of the two laws attacked, and that the argument made and the cases cited by the appelle does not support its effort to go beyond this limit.

Appellants' Reply to Points III and IV, Brief Department of Conservation of Louisiana, Pages 22-31.

It is attempted by the appellee in support of its argument on these two points to take the position that the sections complained of in the laws attacked does not violate the Fourteenth Amendment, by denying to citizens of Louisiana the equal protection of its laws, citing in support of this contention McCready v. Maryland, 94 U. S. 391, Wharton v. Wise, 153 U. S. 155. In both of these cases no question was involved of a statute favoring one citizen of a state over another citizen of the same state; the only question involved was the right of the state to preserve to its citiezns and to its residents the privilege of taking or planting oysters in the waters of the state. These cases did not decide that the state of Virginia could prevent one of its citizens over another of its citizens, but it did decide that it could prevent a non-resident from wihtout its authority taking the property of Virginia against a prohibition of this right.

The case of Lubetich v. Pollack, 6 Fed. 237, decided this same question, that is, that a state could forbid an alien from fishing in its waters, but the point raised by the appellant presents an entirely different state of facts and no case has been cited by the appellee contravening the position of appellant. For instance, in the shrimp case, any resident of Louisiana, any association or corporation composed of residents of Louisiana, or any corporation domiciled in Louisiana, having a packing or canning plant or a drying platform, may take oysters from the waters of

the state in unlimited quantities; however, this right is denied to appellants, who are citizens of Louisiana by virtue of their incorporation and domicile, because they do not have such a packing or canning plant or drying platform. In other words, if the appellants were equipped in every possible way to catch and transport oysters if they complied or offered to comply with every term of the act loking towards the conservation of natural resources of Louisiana, they would be prevented from engaging in any part of the shrimp business unless they were equipped with a plant for canning the shrimp or a platform for drying the shrimp.

We can suppose, for instance, that the appellants had contracted to catch and to deliver to a factory in Louisiana thousands of barrels of shrimp. If the Foster-Fountain Company were an individual resident in Louisiana it would have this right and could carry out this contract. If it were an asociation composed of residents of Louisiana it could carry out this contract, or if it had a few hundred dollars invested in a drying platform it could carry out this contract, but, although it is incorporated in Louisiana, and has a domicile in Louisiana, under the restrictions of the sections complained of, it would be prevented from carrying out this contract. None of the cases cited by the appellee sustain this right of the state to discriminate between its citizens. It may deny to outsiders the right to fish in its waters; it may deny to alien residents in its state the right to fish in its waters, but it cannot deny this right to its own citizens or discriminate between classes of its citizens. This requirement is purely abitrary because it does

not tend towards decreasing the amount of shrimp taken from the waters, does not tend towards the enforcement of the valid features of this act, does not yield to the state of Louisiana greater wealth as a severance tax and does not preserve to the people of the state a food supply. It is purely an arbitrary classification of its citizens into that class that can fish and transport shrimp and that class that cannot fish and transport shrimp.

We find the same evil in the oyster act in the sections complained of, except that the evil here is greater. This act actually deprives a citizen of Louisiana, that is, the Sea Food Company, a corporation domiciled in Louisiana and composed of citizens of Louisiana, from fishing, transporting or canning oysters, although it allows non-residents and aliens this privilege. (See original brief page 271.) This we say, that the state cannot do, without denying citizens of this state the equal protection of its laws. Supporting our position as against the citations of authorities made by the appellee, we cite to the court the case of Miss. v. Jim Hill. 53 So. 411. The decision in this case denied the right of the Board of Supervisors of one county from denying to the citizens of another county the right to fish in the waters of the state.

The case of Charles Gustafson v. state of Texas, 43 L. R. A. page 16, the appellant was convicted of violating statutes of the state of Texas, which restricted the right of its citizens to take fish from the waters of the state of Texas, in this case oysters, to those who had obtained a license and prohibited the issuance of licenses to any one except to those who were taxpayers.

In his opinion, Mr. Chief Justice Henderson, as organ of the court says:

"But it is contended here that the right to take the oysters in the public waters of the state is a privilege which the state can bestow as it pleases; that it can lease or let its public domain on whatever terms it sees fit. We cannot assent to this proposition. It might be so in a kingly government, but not in a free government in which all are equal before the law. * * * The state has no right to discriminate against any citizen or class of citizens as to the enjoyment of its public domain. The state has no more right to authorize one class of its citizens, to rent or use its public lands. We do not believe it could be seriously contended that the state could authorize only taxpayers to rent its public domain of lands, to the exclusion of another class of its citizens who were not taxpayers. This would not only be a discrimination, but discrimination in favor of the rich as against the poor. If the state could authorize its citizens who were taxpayers to fish, and inhibit its citizens who were not taxpayers from fishing in its public waters, it could equally authorize its citizens who were not taxpayers to fish in such waters to the exclusion of those who were taxpayers. * * * The fact that it is class legislation qualifies the act, or that provision of it authorizing the granting of a license, and so renders it unconstitutional and void. We hold that the waters of the state, as well as all its domain of public lands, are equally open to all of its citizens upon the same terms and conditions, and that the attempt of the legislature to prohibit residents of the state who are not taxpayers, but who are willing to pay li-

cense tax, from fishing in the public waters of the state, is violative of these provisions of the constitution before mentioned."

The principle was equally upheld by the Supreme Court of the United States in the case of Gulf, Colorado and Santa Fe Railway Co. v. Ellis, 165 U. S. 150, and the case of Yick Wo v. Hopkins, 118 U. S. 356, and numerous other cases cited by the appellant in its original brief.

We therefore with respect suggest to the court that the state of Louisiana cannot deprive one of its citizens of a valuable right in favor of other citizens merely because of the difference in ownership of property of these citizens. That this attempt cannot be upheld as a regulation of the taking of wild life, or as a conservation of its natural resources as it tends to do neither, nor can the possession of the utilities require possible effect the conservation of its resources, and therefore the classification is a purely arbitrary one which it is not within the power of the state of Louisiana to make and in making this classification it has violated the Fourteenth Amendment to the Constitution of the United States, and this violation is not excused or explained in the authorities cited by the appellee in support thereof.

Appellants' Reply to Point V and VI, Brief Department of Conservation of Louisiana, Pags 31-48.

Under these points the appellees take the position that a state may regulate interstate commerce by reason of its ownership of wild life before this wild life is reduced into

private possession and traded in so as to make it an object of commerce. We respectfully call to the attention of the court that the basis of the argument of appellees in support of this position is the assertions contained in the Act, they seem absolutely to ignore either the purpose of the Act as expressed by the Act itself, or the often expressed ruling of Your Honors that you will not be bound by a mere legislative declaration, but will look into all of the facts contained in the record to see if there is any basis for these declarations. Tyson and Bros. v. Banton, 47, S. C. R. 426, 273 U. S. 418. We shall therefore pause here and look into the record of this case to see if it substantiates the bold position taken by appellees.

That appellees state that the legislative acts declare that the oyster shells and the shrimp hulls are valuable as natural resources, admitting that they are of intrinsic value, has the state, from this reason alone, the right to burden the rest of the world in their use of these articles after the state has parted with its title by levying a severance tax and have invited, by its legislative act, the balance of the world to share in the use of the products of its natural resources.

The evidence shows and the appellees frankly admit that every shrimp and every oyster caught in Louisiana, save for an insignificant amount used locally, are intended to go out into general commerce. The act itself specifically authorizes this commerce and recognizes the validity of it. In other words, when a fisherman takes his net in St. Bernard Parish and goes out into the waters of the Gulf of Mexico for the purpose of reducing shrimp to his possession, he

does so knowing that the fruits of his quest would be valueless to him unless he were able to sell the shrimp to some person who intended to use same in commerce. From the very moment that the shrimp are caught, as shown by the record, there is a continuous movement in commerce, first, the shrimp are transported on navigable waters to a factory; at this factory, after the severance tax is paid, they are converted into canned food and are packed in cases for shipment. While this process is taking place, orders are sent from all over the United States to the owner of the factory and the shrimp are then placed in cars or on boats and shipped in interstate commerce. The same process applies to the head and hulls after the same are reduced to a bran, and therefore there is never a thought of any use of these shrimp from the time they are caught except a desire to inject the same into commerce. Therefore, the only value that they posses as a natural resource is a value that is obtained by reason of their sale in interstate commerce, and the question is presented to the court as to whether or not the state of Louisiana can go to the balance of the world and say in substance as follows: Nature has provided us with a wonderful supply of shrimp and oysters which are fit for human consumption and which have a valuable by-product to-wit: Chicken feed and shrimp bran. The supply is entirely too large for this state to utilize and it is of no value to us unless we can deal with you and exchange these shrimp for your money and products. We are willing to sell to you without restriction unlimited quantities of shrimp and oysters, in fact all the shrimp and oysters our fishermen, or non-resident fishermen employed by our corporations, can catch, and then after the balance

of the states have agreed to buy their products, say to the balance of the world, however, there is a condition that we attach to your buying these shrimp and oysters, that is, although commerce with you has given these articles their sole value, although we have exacted first a severance tax on the shrimp and oysters, and although we have provided that only our people can engage in the business of catching the same, you must bear another burden, that is, regardless of how it affects you in your use of these articles, or the price you pay for these articles, they must be canned and packed in Louisiana so that thereby all the wealth that comes from or out of these articles in interstate commerce must remain in Louisiana. We want the very last pound of flesh so that when the trade balance is struck between us every item will be in our favor. By the argument of appellees this is the stand taken in support of the sections of this act which are complained of. Following up this line of thought to a conclusion it is reasonable to say that if Louisiana can condition commerce in shrimp and oysters solely because they originally were the property of Louisiana so as to interfere with interstate commerce in compelling the raw material to be manufactured in Louisiana, even though the purpose of manufacture is for interstate commerce, and such commerce has in fact started there, the state of Louisiana would have the right to say that no person could purchase these shrimp or oysters unless for a designated use, or they would have the right to say that only citizens of certain states might purchase same. For the very argument of the appellees is that there is no limit to the conditions that can be lawfully imposed by the state of Louisiana for the reason that the general law applying

to commerce among the states is enactive if this commerce consists of the natural product of the state.

The appellees in their brief contend for this construction in using the following words: "The commerce rules does not contemplate the fisheries within a state * * * it contemplates the industries as distinguished from commerce that arises out of or rather is part of the fisheries."

In this contention they are supported neither by any direct decision of this court, or by the reasoning in any decision of Your Honor's in any other case, and in the whole jurisprudence of the United States, this thought has been frowned upon except in the case of Alabama vs. Harrub, 15 L. R. A. 761. Against this line of thought we first find the declaration of its own highest court, for in the case of said Louisiana vs. Ferrandeu, 58 Southern 870, Justice Monroe, one of the most illustrious characters who ever adorned the bench of the state of Louisiana, thoroughly considered every argument advanced here by the appellees and decided adversely to these arguments.

In as much as Your Honor will be governed by the decision of a state court in defining its police powers, Dorchy vs. Canders, 47 Supreme Court Reporter 278, 272, U. S. 306, this decision destroys the claim that the state in enacting the law complained of was acting within the scope of its police powers. Furthermore, coming up to the very question that is raised here by the appellees, with a line of thought controlled by the pure logic, the learned Chief Justice decided against the position of the appellees in the following language: "The negotiation, therefore, in Missis-

sippi, of the sale of oysters, which are in Louisiana (and being lawfully sold there in open market,) for the purpose of introducing them into Mississippi, is interstate commerce, and a condition, imposed by the law of Louisiana, that one buyer, in Mississippi, shall have his oysters shipped to him provided he intends to make this use of them, and another buyer may have his shipped, provided he intends to make that use, is a regulation of that commerce, within the law, as we understand it, vesting such power of regulation in Congress nor do we think that, as applied to this case, it affects the discriminating character of the regulation, that the oysters were bought in New Orleans, by defendant, and shipped by him to the canning company, in Biloxi, for which he purchased, or to which he sold them."

The case of Geer vs. Connecticut, 161, U. S. 519, gives no further comfort to the appellees on this question, for in deciding this case the court specifically pointed out that even as the state could control this wild animal life at its source, it could also control internal commerce in the same by limiting all commerce to internal. It cited with approval the California case where the lines between these two forms of commerce were so plainly outlined, and nowhere in the whole decision is there any suggestion that it affected interstate commerce except in the very remotest degree. A part of the language used by Chief Justice White in this case is as follows: "In view of the authority of the state to affix conditions to the killing and the sale of game predicated as this power is on the peculiar nature of said property, and its common ownership by all the citizens of the state, it may well be doubted whether commerce is

created by an authority given by the state to reduce game within its borders to possession, provided such game be not taken, when killed, without the jurisdiction of the state." There would have been a different question presented, and in our opinion a different decision rendered, had the Connecticut law provided that the meat of the bird and its feathers, when manufactured in the state into food and clothing, could be shipped without restriction in interstate commerce, for, as Your Honor will notice in the above quotation, the court said that commerce was not created provided a warning was given that the possessor could not engage in this commerce.

In the instant case more than permission is given, an invitation is given by the very act itself, to engage in commerce without the borders of the state. The learned Chief Justice also noted with approval Mr. Chief Justice Marshall in Gibbons vs. Ogden, 9 Wheaton, 194, as follows: "It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, and between different parts of the same state, and which does not extend to or affect other states.

Therefore, we suggest to the court that running through this entire decision is the rule that the matter did not embrace interstate commerce, and that in deciding the case there was involved no question of interstate commerce.

The same distinction runs through the case of Lacoste vs. The Department of Conservation, 263, U. S. Page 545,

for in deciding this case therein hold that the State of Louisiana had a right to collect a severance tax even to the extent of making a dealer responsible for this tax, the court paused and distinctly stated that the state, neither under the police powers nor under the highest right it possesses, the power of taxation, could in any manner interfere with interstate commerce. Citing with approval the case of State of Louisiana vs. Ferrandau, Supra, in which case Justice Monroe had given the same utterance. We therefore state to the court that when one deals in a article within the borders of a state, Your Honor will not make such a fine distinction between internal commerce and external commerce, as to say, that up to a certain point, that is, in the instant case, up to the time that the oysters and shrimp are placed in cans and up to the time the hulls and shrimp are manufactured into grit and fertilizer, however, comprehensive as it may be, regardless of the extent of this commerce, it is internal commerce, but the moment the hulls of the shrimp and the shells of the oysters are removed it becomes general commerce subject to the restrictions of the commerce clause of our Constitution.

Unless the court can make this distinction, unless it can place this construction upon the law, to which extent Your Honor have never yet gone, unquestionably the law is a regulation of interstate commerce and void, and we call to the attention of Your Honor that the reasoning of Justice Monroe in the Ferrandau case, Supra, is more in line with the splendid thought of the Supreme Court of the United States since the date of Gibbons vs. Odgen, that

is, the reasoning in the case of the state of Alabama vs. Harrub, 15 L. R. A. 761, cited in support of the contention of appellees, this being recognized by Your Honor in taking the opposite view of the matter in your decision in the case of Lacoste vs. Conservation Department, Supra, wherein Your Honor selected the Louisiana case as a citation, rather than follow the idea announced in State of Alabama vs. Harrub, Supra.

The appellees recognized this when they dismissed the Farrandau case without attempting to differentiate this case and the principles announced therein from the case at bar, except in so far as they state that the Farrandau case decided another point, that is, that no person could ship oysters for canning out of the State of Louisiana. They admit that this would be a regulation of commerce, and such regulation would be invalid.

We therefore say to the court that in making this acknowledgement that the appellees admit themselves out of court. That there is no difference between the two statutes except in the words used, which in the 1926 law complained of are meaningless. The object and purposes of the law of 1910 was plainly expressed. It forbade the shipment from Louisiana of the oysters for canning, in the statute here attacked while this purpose is attempted to be concealed, yet it is plainly apparent that this is the purpose of the law and the sole object of the law. Furthermore, may it please Your Honors, if the State of Louisiana can allow traffic in unlimited quantities of oysters and shrimp purely because of her original ownership of these oysters and

shrimp, yet with a condition always attached that they shall not be sold in interstate commerce, and this regulation would be valid, why could it not say that the title to the oysters would pass to one man provided he agreed not to manufacture the oysters into food, but to use it in its raw state, and say to another man that the title would not pass to him if he expected to manufacture the oysters into food unless they were manufactured in Louisiana? If the sole object of the first was to prevent competition in the manufacture of oysters, and to enrich Louisiana by the added taxation arising from factories, then we say to the court that the sole purpose of the law here attacked is the same, and unless there is a limitation to the State of Louisiana in encroaching on interstate commerce in conditioning the removal of its title to game, there is no limitation that could be placed upon the conditions imposed by the State of Louisiana in allowing external commerce arising from fishing in its waters, and if such commerce cannot be conditional and the statute of 1910 was void because it was an interference with interstate commerce, and this was admitted by the appellees, then the statute here attacked is void because it interferes with interstate commerce, because any attempt on the part of a state to limit, regulate or restrict commerce between states is void. We cited in support of this statement the case of Brimmer vs. Rebman, 138, U. S. 78, and the cases found from Page 109 to 137 of the original brief.

Counsel for the Department of Conservation of the state of Louisiana call attention on page 44 to the use of hulls in the state provided by the act. It will be noted that

there is no requirement under section 8 of the act hat after the oysters are taken from the reefs to a factory for canning, the same be at any time returned to the reefs for clutch. The proof in the case established without controversy that as to the portion of the Louisiana reefs east of the Mississippi river, such reefs contain millions of old oyster shells, and that the Department of Conservation, instead of requiring them to be kept there as clutch, was actively engaged in selling them to private individuals, who manufactured the same into some kind of commodity and was shipping the same out of the state not only without interference or obstruction but with the permission of the Department, express or implied. See the following affidavits: Ernest Desporte, Jr., 769 Tr. 39-40; Taltubal 769 Tr. 80-84; Louis Braun 769 Tr. 44; C. B. Foster 769 Tr. 76. Each of the foregoing affidavits also establish the fact, beyond controversy, that only a very small portion of the actual oysters are consumed in the state of Mississippi, and practically none of the by-products of oyster shells.

Calling Your Honors' attention again to the fact that the law is not a conservation measure, we direct Your Honors' attention to the affidavit of James N. McConnell, director of the Oyster Division of the Conservation Department, filed in cause No. 769, Tr. 87, which contains the following language: (Tr. 88).

> "The provisions of this law, which law was adopted in the legislative session of 1926, these provisions applying to the prohibition of the exportation of oysters in the shell from Louisiana, did not go into effect until January 1, 1928, this

being done to give the oyster canning factories in Mississippi an opportunity to acquire sites and build their factories in Louisiana.

"A similar provision in the shrimp law of Louisiana brought several of the shrimp canning factories into Louisiana where they might enjoy the natural resources from the waters of Louisiana.

"There are many sites in Louisiana that would be suitable for the erection of oyster canning factories in this state. Dunbar-Dukate Company has bought a site at Slidell, Louisiana, to which he intends to move his Biloxi, Mississippi canning factory as soon as this Louisiana law governing oysters is enforced.

"The Conservation Department of Louisiana is prepared to enforce this Louisiana law and has been enforcing it against everyone until restrained in this case by the court order."

In other words, there is no contention that the purpose of the law was to lessen the number of oysters or shrimp which would be taken out of the state. Upon the other hand, the act was intended to be and is construed as an invitation to industries in other states to remove to Louisiana territory so that they may enjoy without limitation or restrictions, the right of removing shrimp and oysters from the state.

But recurring again to the question of clutch, we call your Honors' attention to the foregoing quotation from the affidavit of Mr. McConnell, wherein he uses the following language:

"There are many sites in Louisiana that would be suitable for the erection of oyster canning factories in this state. Dunbar-Dukate Company has bought a site at Slidell, Louisiana, to which he intends tomove his Biloxi, Mississippi Canning factory."

Your Honors will notice from the map that Slidell, Louisiana, is forty miles from the reefs were the oysters would be taken from, and it is certainly a stretch of the imagination to say that one of its factories would take the shells of the oysters and carry them back to the reefs as Clutch. Such was not the intention of the act; there is not a hint or suggestion of any duty upon the part of a factory separating the shells from the oysters that the same be taken back to the reefs. In fact, the act was careful not to impose any such duty upon its industries. To do so would place them at a disadvantage in the interstate competition for the sale of its commodity.

But not only that, section 3 contains the following language:

"And after said oysters all have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore

existing in the State shall pass to the lawful taken or then possess of such oyster shells."

The law emphasis upon the fact that the act has no relation to the conservation of natural resources, evinces no purpose to reduce or diminish the number of oysters or shrimp which may be caught from the waters or taken from the reefs, provided they are packed or canned in the state of Louisiana.

Appellant's Reply to Point VII, Brief Department of Conservation of Louisiana, Pags 45-48.

In the argument of appellee under this point the position is taken that the right to fish oysters or shrimp is not a property right, and a denial of the right to engage in commerce with reference thereto by contracting for such commerce is not protected by the Fourteenth Amendment to the United States Constitution, and in support of this position the appellee contends that no right to contract with reference to a natural resource is given to any citizen of a state owning such natural resources, except in the manner and to the extent permitted by the laws of the state owning such natural resource.

Opposing this position, we respectfully call to the court's attention that the appellant, Foster-Fountain Company is a corporation organized under the laws of the State of Louisiana, and the appellant, Sea Food Company, is a corporation organized under the laws of the state of Louisiana, domiciled in said state, with a majority of its stock held by resident citizens of said state. (record page

70). Therefore, under the ruling of this Honorable Court these corporations are persons within the meaning of the Fourteenth Amendment to the Constitution of the United States, providing equal protection of the law. Southern R. R. Co. v. Greene, 216 U. S. 400, 54 L. Ed. 536; Santa Clara County v. Sou. &c R. Co. 118 U. S. 394, 30 L. Ed. 118, Pembina Consol. Silv. Min. Co. v. Penn. 125 U. S. 181, 31 L. Ed. 650; Charlotte &c. R. Co. v. Gibbons, 142 U. S. 386, 35 L. Ed. 1051; Covington &c. Tpk. Road Co. v. Sandford, 164 U. S. 578, 41 L. Ed. 560; Gulf R. Co. v. Ellis, 165 U. S. 150; Smyth v. Ames, 169 U. S. 466, 42 L. Ed. 819. This being true the fish, game or other wild life of the state of Louisiana is held by the state of Louisiana as a trustee for the people of the state, that is, for its citizens, which trust must be administered without discrimination among them.

In Gratz v. McKenzie, 258 Fed. 338, (Eighth Circuit Court of Appeal) Mr. Justice Garland, as organ of the court, said:

> "Fish, generally speaking, on account of their migratory character and for want of a fixed habitat, are classified as animal ferrae naturae. Their ownership, while they are in a state of freedom is in the State, not as a proprietor, but in its sovereign capacity as the representative and for the benefit of all its people in common and the ownership may not be claimed by any particular individuals. 11 R. C. L. 1015; State v. Heger, 194 No. 711; State v. Weber, 205 Mo. 36; 10 L. R. A. (N. S.) 1155.

In Smith v. Maryland, 18 How. 71, Mr. Chief Justice Curtis on page 74, said:

"Whatever soil below water mark is the subject of exclusive propriety and ownership belongs to the state, on whose maritime border, and within whose territory it lies.

* * * * * But the soil is held by the state, not only subject to, but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shell as floating fish."

Therefore, if the state of Louisiana held title to its fish and game as a trustee for all of its citizens, it could not discriminate as between these citizens, unless this discrimination was for the purpose of protecting the majority of its citizens, or for the purpose of prescribing regulations to promote the health, peace, morals, education or good order of the people and, unless there was such a reason for the enactment of this law here attached, any effort on the part of the state of Louisiana to prevent the appellant here from contracting to sell and selling, or from catching or shipping oysters and shrimp caught from the public reefs of the waters of their property, that is, their right to contract takes their property without due process of law, as well as deprives them of the equal protection of the law. The appellees cite in substantiation of their position the case of New Orleans v. Water Works Company, 142 U. S. 79. In this case this Honorable Court decided that in-as-much as a municipal corporation was a public corporation and not a private corporation, that any contract made by it in-so-far as its rights under the contract were concerned, were subject to change by legislative enactment for the reason that the corporation itself, being a creature of the legis-

lature, must always respond to the will and desire of the legislature. Furthermore, the very contract that was urged in this case had been held by the Supreme Court of Louisiana to be an invalid contract and this Honorable Court held that the ruling of this state court of Louisiana on this subject was decisive.

In the case of Barbier v. Connolly, 113 U. S. 27, the question before the court was the right to restrict the activities of certain businesses in certain sections of San Francisco. It appeared to the court that there was a necessity for this regulation and it applied equally to all persons similarly situated and engaged in the same business. There was nothing before the court to show that there was an arbitrary classification, but on the contrary, there was every reason to beleve that it was necessary to make this regulation of certain classes of business.

This rule was announced in the above case in the following language:

> "Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

In the case of Atkin v. Kansas, 191 U. S. 207, the question before the court was the right of the state of Kansas to enforce a law governing the hours of laborers employed on public works, and in deciding this question this Honoroble Court used the following language:

> "We have no occason here to consider these questions, or to determine upon which side is the sounder reason; for whatever may have been the motive controlling the enactment of the statute in question, we can imagine no possible ground to dispute the power of the state to declare that no one underatking work for it or for one of its municipal agencies should permit or require an employee on such work to labor in excess of eight hours each day, and to inflict punishment upon those who are embraced by such regulations and yet disregard them. It cannot be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the state. On the contrary, it belongs to the state, as the guardian and trustee for its people, and having control of its affairs, to precsribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities. No court has the authority to review its action in that respect. Regulations on this subject suggest only considerations of public policy. And with such considerations the courts have no concern."

There was no semblance to the case at bar in this case and the same question was decided in the case of Hine v. McCall, 239 U. S. 175.

These cases did not cover a situation where a state holding property in trust for all of its citizens arbitrarily discriminated against some of its citizens in favor of others, in fact, the laws complained of in both the cases above cited were for the equal protection of all the citizens of the state and were for their equal advancement and service. There was no attempt there to say to one contractor that you can employ laborers ten hours a day, or you can employ alien labor provided you are equipped with certain tools, or certain conveniences for employing this labor, and to say to another contractor because it happened to be a corporation that you must work your men only eight hours a day and you must refrain from working aliens because you do not happen to possess certain equipment that we deem essential in properly using this type of labor for the additional length of time. This, Your Honors, is what the Louisiana statute complained of here does, for although, under the only construction ever given to the states ownership of its wild life, it holds this wild life in trust for all of its citizens. In the statute complained of by the appellants it denies the right to take, can, deal in or contract with reference to shrimp and oysters, unless the corporation so doing has a packing plant, drying shed or shucking shed situated in the State of Louisiana.

The applellees argue that there is a reason for this classification. The appellees say that this reason is that the state can require one fishing or dealing in oysters to have a shucking shed, or a packing plant, so that the natural resources of the state can thereby be better conserved, but if this be true why did not the law provide that resident

citizens or associations of resident citizens be compelled to have the same equipment?

The effect of this law is to absolutely deprive the appellants of their right to contract in any manner with reference to oysters. It would be unlawful for the appellants to contract with other citizens of Louisiana to go on to the public reefs of this state and buy oysters at the market price and to deliver these oysters to a packing plant lawfully operating at a price yielding a profit; the purchase of the oysters would be an unlawful act; the possession of the oysters would be an unlawful act, and the transportation would be an unlawful act, unless the appellants had equipped themselves with a packing plant or shucking shed which, under the above circumstances, would be useless to them. It therefore, can readily be seen that there is no reason for this classification, but that on the contrary, it is absolutely arbitrary and the Supreme Court of the United States in reversing the case of Gulf, Colorado & Sante Fe Railroad Company v. W. H. Ellis, 165 U. S. 150, used the following language:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the 14th Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court in Yick Wo. v. Hopkins, 118 U. S. 356, 369, 30: 320, 326: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we

are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal —that they are endowed by their Creator with certain inalienable rights, that among those are life, liberty and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision, as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and letter of which the former is the thought and spirit, and it is always safe to read the letter of the constitution in the spirit of the declaration of independence. No duty rests more imperatively upon the courts than the enforcement of these constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * "

Therefore, we say that any citizen possesses a contract right to the fruits of natural resources when these fruits belong equally to all the citizens of a state, and that no condition precedent to reduction to private ownership is valid unless this condition be free from an intent to prefer one citizen over another, and that if the condition does prefer one over another it takes away from the one discriminated against a property right and takes from him his property without due process of law, as well as denies to him the equal protection of the law.

Appellants' Reply to Point VIII, Brief Department of Conservation of Louisiana, Pages 48-52.

Under this head the appellee attempts to sustain the position that proof of violation of a prohibitory law does not tend to show the unconstitutionality of that law as a denial of equal protection of the law to the extent that the state may be enjoined from enforcing the statute complained of. Upon this point we wish to call to the court's attention again the fact that the appellant does not complain of a surreptitious violation of this law by any citizen of the state of Louisiana, but the complaint is levied against a scheme for its violation, which the appellants say begun in the very legislature which enacted this law.

We call to the court's attention the affidavit of B. Taltavull, found on page 83 of the oyster record. This proof shows that when certain citizens of Louisiana, engaged in that type of business known as the raw oyster business, went to Baton Rouge to oppose the law, that they were told that the law would not injure their business for the reason it would not be enforced against them. This affidavit was introduced in evidence and no evidence thereto was introduced on behalf of the appellees.

We further call to the court's attention the affidavit of J. R. McKinnon, found on page 72 of the oyster record, and of D. J. Goodin, found on page 61 of the oyster record. These affidavits show that the affiants had spent over a week in New Orleans; had gone into the places of business of all of those persons who were engaged in shipping raw oysters for use in their raw state; had talked to these per-

sons; been quoted prices by them; had been told that they would sell and deliver to them oysteres to any place in any state, and in any quantity. The affiants further stated that, although they had become intimately acquainted with the details of this business, that is, the raw oyster business, and although it was a large and growing business, embracing commerce in many barrels of oysters a day that at no time did they see any effort on the part of the Conservation Department of Louisiana to enforce this law; that no inspection was made of these oysters shipped in a raw state in interstate commerce, and no inspectors were placed in the neighborhood where this business was conducted for the purpose of enforcing this law, in fact, as far as the record shows the Conservation Department of the state of Louisiana absolutely ignored this unlawful traffic in raw oysters. There was no denial by the Conservation Department of this charge that they had no inspectors overlooking this traffic, except a denial in general terms. There was no affirmative statement that their inspectors were charged with an observation of any attempted violation of this law by the raw oyster dealers, yet, at the same time, the evidence on the part of appellants, without denial from appellees, was to the effect that the minute the oyster law went into force, that men were placed on boats by the Conservation Department of the State of Louisiana; that these boats were cruising the waters of the State of Louisiana alert for any violation of the oyster law, threatening at all times to arrest any violation of the oyster law, to imprison the violators and to confiscate the boats and equipment used by them in the violation of this law.

In the shrimp case, we find the affidavit of twelve Louisiana citizens (record in shrimp case page 60). In this affidavit these citizens of Louisiana state that of a knowledge born from years of fishing that all shrimp caught in Louisiana were caught in the inside waters of the state. We find the affidavit of L. J. Folse (shrimp record page 106). That these shrimp have been shipped in a raw state from Louisiana in large quantities, that the business is a growing business and that there was no effort on the part of the Conservation Department to prevent this business. It is true that the appellees deny this in general terms, but this denial is unaccompanied by any offer to show that there is an inspection of this business of the same rigorous character that the record shows was enforced against the persons catching shrimp intending to export same to Mississippi for canning. Certainly, we do not contend here that just because a law is violated by one person or by a number of persons that some other person prosecuted under this law would have a right to enjoin its enforcement.

Therefore, the illustration made by the appellee of the Volstead law or gambling law has no bearing here, but we do say and urge upon Your Honors that where a state attempts to place certain restrictions upon the carrying on of any occupation or in prohibition of any occupation or calling and enforces its laws only against one class of its citizens and ignores entirely another class of its citizens, then such discrimination exists as to justify this court in declaring the act complained of unconstitutional because of its manner of enforcement.

In point 4 of our original brief, beginning at page 209, we presented to Your Honors the view that the acts as construed and enforced by the Conservation Department of the state of Louisiana, charged with enforcement thereof, violated the 14th amendment to the constitution of the Untied States, as well as the commerce clause by reason of the fact that such acts were enforced and construed by the department whose duty it was to enforce the same as only applying to oysters or shrimp being shipped out for the purpose of packing or canning beyond the limits of the state.

We have referred Your Honors to the testimony in support thereof, and cited an abundance of authority.

Counsel for appellee cite the case of Mackey Cable Co. v. City of Little Rock. 250 U. S. 94, 63 L. ed. 863. In that case the city of Little Rock imposed a license tax upon telegraph poles. A similar ordinance but separate one imposed a similar tax on other poles used in the state. There was an effort made to enforce the tax against the appellant but no effort had been made to collect the tax from the owners of other poles liable for the tax. This court held the fact that other persons had not been sued was not determinative against the liability of the appellant in that case, using the following language:

> "Nor is there ground for holding that plaintiff in error is subjected to unreasonable discrimination, in contravention of the equal protection clause of the 14th Amendment. The case shows that its franchise ordinance imposes the same and no greater tax than that which is applied by a gen-

eral ordinance to other companies maintaining poles in the city. The offer of testimony to prove that the two other companies were not in fact required to pay the tax upon so many of their poles as stood upon railroad rights of way went no further than to show that the general ordinance had not been enforced against them in the same manner that it was proposed to enforce the franchise ordinance against plaintiff in error. There was no offer to show an arbitrary and intentionally unfair discrimination in the administration of the ordinance, as in Yick Wo. v. Hopkins, 118 U. S. 365, 374, 30 L. ed. 220, 227, 6 Sup. Ct. Rep. 1064."

In this case, however, we have shown, beyond peradventure, that the department of the state of Louisiana charged with the enforcement of the act, by a uniform course of construction, is so enforcing and construing the language as only applicable to persons shipping shrimp and oysters from the state to be packed or canned. In other words, a corporation or individual or a partnership is permitted to ship the shrimp and oysters in the hulls and the shells in unlimited quantities and without restriction, supplying the demands of the fresh shrimp and oyster trade, but that neither an individual nor a corporation, although the corporation may be a Louisiana corporation owned by Louisiana citizens, having the right to do so under its charter, is permitted to ship out shrimp or oysters to be packed or canned out of the state.

We reiterate the argument contained in our original brief, that the act is being construed and enforced as if

the same was identical in language with the 1910 act stricken down in the Ferandau case.

In addition to the cases cited in our original brief, in the more recent case of F. & D. Co. v. Tafoya, 270 U. S. 426, 70 L. ed. 664, the following language is used:

> "It is suggested that the district court had no jurisdiction because the bill does not allege that the statute is unconstitutional, but only that the statute as construed and applied by the defendants is so. But even if the statute did not plainly purport to justify and require the threatened action, or if the bill fairly taken did not import a denial of the constitutionality of the law as applied to this case, the plaintiff still would be entitled to come into a court of the United States to prevent such an alleged violation of its constitutional rights. Raymond v. Chicago Union Traction Co. 207 U. S. 20, 52 L. ed. 78, 28 Sup. Ct. Rep. 7, 12 Ann. Css. 757; Home Telep. & Telg. Co. v. Los Angeles, 227 U. S. 278, 57 L. ed. 510, 53 Sup. Ct. Re. 312; Cugahoga River Power Co. v. Akron, 240 U. S. 462, 60 L. ed. 743, 36 Sup. Ct. Rep. 402."

And we respectfully refer Your Honors to the cases cited in the foregoing opinion last above mentioned. They are directly in point and support the contention of the appellant.

Appellant's Reply to Point IX, Department of Conservation of Louisiana, Pages 53-59.

The appellees take the position under this point that the charters granted to the Sea Food Company and to the

Foster Fountain Company did not prevent the State of Louisiana from thereafter with-holding rights granted under the charters, if in with-holding these rights the state was acting within the scope of its police powers, we here call to this Honorable Courts attention that while the charter of the Foster Fountain Company only grants a general right to the Foster Fountain Company to pack and sell and generally deal in commerce in can goods including shrimp and oysters; that the charter granted to the Sea Food Company by the State of Louisiana especially gave the right to the Sea Food Company to import and export shrimp and Oysters, the right being given in the followning language: "To buy, sell, can, import and export oysters, shrimp, fish, fruit and vegetables; to buy, operate and run boats and seines necessary to catch said shrimp, oysters and fish." Record Page 22. We call to this Honorable Courts attention here that there is no provision cited by the appellees under the laws or the constitution of the State of Louisiana which provides that the state has a right at any time to annul, amend or abridge contracts between it and corporations evidenced by the charter rights given corporations, except that there is a provision of the State of Louisiana which provides that the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general welfare of the state. In other words, unless the law in question here is a valid exercise of the police powers of the state of Louisiana looking always with reference to the peace, morals, welfare and safety of its citizens, then the exactment of this law can not annul or abridge rights given to a corporation under its

charter. Russell v. Sebastin, 233 U. S. 195, 58 L. ed. 912; Dartmouth College v. Woodward, 4 Wheat. 518 4 L. ed. 629; Miller v. People of N. Y., 15 Wall. 478, 21 L. ed. 98; Chicago B. & Q. R. R. Co. v. Cutts, Attorney General, et al, 94 U. S. 154, 24 L. ed. 94. We therefore respectfully present to the Court that in as much as this Honorable Court has time after time held that the opinion of the Supreme Court of the State construing its statutes will be binding upon this Honorable Court, then the decision of the Supreme Court of Louisiana in the case of the State of Louisiana vs. Ferrandou would be decisive of this question, for in that opinion construing a law similar in effect to the present law, Judge Monroe said that it was not within the police powers of the State of Louisiana to pass a law and enforce a law, the effect of which was to prevent the shipment of oysters out of the state to be packed, while allowing oysters already canned and packed to be shipped out of the state. Furthermore, we state to this Honorable Court that the exactment of the law here questioned is not necessary to the general welfare of the state, and that to allow the appellant corporations to carry out the rights and privileges granted them under their charters would not infringe the rights of individuals of the State of Louisiana, and for these reasons the contract between the state and the corporations contained in the charters could not be affected by the cited section of the constitution of the state of Louisiana.

This conclusion naturally leads us to present to the Court that the fact that in the case of Texas and New Orleans Railroad Company vs. Miller, 221, U. S. 408, cited by

the appellees is not controlling of the question here presented to this Honorable Court.

In that case the legislature had done a monstrous thing. It had empowered the Railroad Company to operate a great business in the State of Louisiana wholly without any liability for the death of any employee however reckless or negligent it might be causing this death, it was not only the surrender of positive rights belonging to the employee, but it shocked every human sensibility. Therefore, in deciding this case, this Honorable Court said that it being the duty of the State of Louisiana to protect and safeguard the safety, health and morals of those within its jurisdiction, that it was without their power to insert such a provision in a charter, and not having this power that the provisions attacked never became a part of the charter contract, the Court using the following language: "The fact that the provision in question was embodied in the statute incorporating the Louisiana company does not suffice to show that it became a part of the charter contract, for obviously nothing became a part of that contract that was not within the contracting power of the legislature. Such of the provisions of the statute as were within that power became both a law and a contract and were within the protection of the contract clause of the Constitution, but such of them as were not within that power became a law only, and were as much subject to amendment or repeal as if they had been embodied in a separate enactment. As was said by this court in Stone v. Mississippi, supra: 'It is to be kept in mind that it is not the charter which is protected, but only any contract the charter may contain'." The same ques-

tion was before the Court in Stone v. Mississippi, 101 U. S. 814, the state here had attempted to give a right to certain individuals to conduct a business that has been outlawed in nearly every civilized country. There is hardly any right necessary for the safety, morals and welfare of a community greater than the right to protect its women, children, and men from the evil effects of a lottery. Certainly the State of Mississippi could not contract away this right. And in the case of Butchers Union Slaughter House vs. Crescent City Live Stock Etc., 111 U. S. 746, the Court expressly held as follows: "The denial of this power, in the present instance, rests upon the ground that the power of the Legislature intended to be suspended is one so indispensable to the public welfare that it cannot be bargained away by contract. It is that well known but undefied power called the 'police power'." We therefore respectfully present to this Honorable Court that when the State of Louisiana contracted with the appellant corporations that it was not surrendering a right given to it by its police power. This was decided in the Ferrandou case. But aside from this decision, how could the welfare, peace, and safety of the majority of the citizens of the State of Louisiana be affected by the right given to the appellant corporations to catch, can, import and export shrimp and oysters. Numbers of other people were at the identical time engaged in the same business. By engaging in this business they were employing numerous citizens of the State of Louisiana and adding to the wealth of the state by employing these citizens as well as by paying a severance tax to the state, and in the case of the Sea Food Company adding to the wealth of the state from any profits coming to the

stockholders of the corporations who were residents of the state. There was nothing vicious or immoral in the business of which then or now could possibly injure the welfare of any citizen of Louisiana.

In attempting to abridge or nullify this contract by forbidding these appellant corporations from carrying out the grants given in their charters, the state is not benefiting its citizenship or protecting those living within its borders, for obviously the law permits, the shrimp and oysters to be shipped from the state in unlimited quantities.

As the law permits any citizen or association of citizens to engage in this business.

As the law permits non-residents or aliens working in catching these oysters for the resident corporations, owning packing plants or shucking sheds.

The state can not say that the object of the law is to conserve to the people any food supply.

It can not say that the object of the law is to conserve to its resident citizens the right to catch the oysters and shrimp in the waters of the state, and as all of the fertilizer and chicken feed obtained is shipped out of the state, it can not say that the object of the law is to use these articles to increase the general prosperity, and therefore the peace and happiness of those engaged in agriculture within the state. In fact all that the state can say in defense of this attempt to deny rights granted these appellant corporaitons under their charters, is that because originally while in a

wild state, the subject matter of the commerce in oysters and shrimp belong to the State of Louisiana, the state has a right to place any condition upon the subsequent commerce in these articles, even though this commerce reaches beyond the limits of the State of Louisiana, and in any other case would be under the protection of the commerce clause in the constitution of the United States. This we say to Your Honors in our opinion is beyond the powers of the State of Louisiana, this right does not eminate or spring from its police powers, it is not in keeping with the often repeated rules laid down by this Honorable Court in construing the meaning of police powers.

It is only an arbitrary unreasonable regulation seeking to give to certain persons in Louisiana a monoply in the carrying on of commerce, the right to engage in and carry on, which was granted the appellant corporations under their charters.

The roads of a state not only belong to it but are subject to its regulation; they constitute not only a thing of value to a state but are vitally necessary to the peace, prosperity, welfare and morals of its citizens. Yet in the instant case, had the charter given a right to the Sea Food Company to operate a truck carrying freight along these roads in Louisiana, and this traffic was no more injurious to the roads than the general traffic upon the roads, and was of the same type carried on generally by other citizens. Could the State of Louisiana, by a law guised under its police powers, destroy the privilege granted under a charter lawfully obtained? We say not, and respectfully present

to this Honorable Court that the cases above cited by us including the Dartmouth College case support our position, right here want to pause and say to Your Honors that the appellees contend that the State of Louisiana may burden and interfere with commerce because of the original ownership of wild life by the State of Louisiana, that this original ownership takes the product thereof from without the general rule laid down by the Courts of our land respecting interference with commerce. Does not the state also own the title to its public highways? Does it not also have the right given it by this Court time and time again to regulate the use of these highways? Yet has not this Court also said in many decisions that this regulation may not go to the extent of burdening or restricting commerce between the states?

Therefore, we present to Your Honors that the right attempted to be destroyed by the State of Louisiana which was given to these appellant corporations in their charters is not taken away because these corporations are exercising any business or function contrary to the police powers of the State of Louisiana, but that state is attempting to destroy this right in order to effectually prevent the defendant corporations from successfully engaging in interstate commerce.

It has not forbade them to engage in this commerce, but by the sections of the acts complained of it has attempted to regulate and restrict this commerce by compelling these corporations to erect certain buildings in Louisiana; by compelling these corporations to use less skilled la-

bor located in Louisiana; by compelling these corporations to remove their factories to Louisiana, thereby largely destroying their value; by compelling the corporations to less the value of their present locations at Biloxi, Mississippi, and to engage in business under new conditions in a new locality, with such uncertainity as to the results of the business as to cause the corporations to apprehend that it will destroy their business. In conclusion on this point we respectfully call to this Honorable Courts attention the fact that in Miller vs. New York, 82, U. S. 15 Wall. 478, cited by appellees, the State of New York had reserved the right to alter, modify or repeal an act of incorporation, therefore, this Honorable Court held that no contract was impaired.

Reply to Brief of Attorney General of the State of Louisiana.

The foregoing brief has been addressed to the argument advanced in the brief of Mr. John Dymond, who appeared herein for the Conservation Commissioner of Louisiana. We shall, therefore, not go over the same argument again in opposition to the brief of the Attorney General of Louisiana, which brief, except for a question of estoppel argued, contains the same argument advanced by Mr. Dymond, relying upon the same cases, which cases we have here attempted to show have no application to the question before this Honorable Court, except that the Attorney General has quoted a number of cases that we consider are so entirely different from the question here presented that we shall call to the court's attention only the fact that these

cases involved a valid exercise of the police power vested in states.

The case of Holden v. Hardy, 169 U. S. 366, decided the right of Utah to regulate the hours that miners worked in the mines of the state, unquestionably this was a valid exercise of its police power.

The case of Dent v. West Virginia, 129 U. S. 114, decided the right of West Virginia to regulate the practice of medicine in West Virginia, unquestionably a valid exercise of its police power.

The case of Mugler v. Kansas, 123 U. S. 623, decided the right of Kansas to regulate the liquor traffic in its state, unquestionably within its police power.

And the case of Munn v. Illinois, 94 U. S. 113 and Budd v. New York, 143 U. S. 517, were cases where the states were allowed to charge inspection fees and regulate warehouse charges in the two states of Illinois and New York.

In the case of Smith v. Ames, 169 U. S. 466, this court expressly refused to authorize a state to lay a burden upon interstate commerce in order to decrease the rate on intrastate commerce.

Therefore, we respectfully present to the court that the cases above cited have no bearing on the case at bar, except the last mentioned case which supports the general doctrine that under no guise can a state attempt to burden or restrict interstate commerce. We also call to the court's

attention that the further cases cited by the Attorney General of Higdon v. Smith, 191 U. S. 325, and French v. Barber Asphalt Company, 181 U. S. 329, are cases with reference to payment of special assessments for improvements done on property. Carroll v. Greenwich Insurance Company, 199 U. S. 401, is a case authorizing the state to restrict agreements between insurance companies, and Hertado v. California, 110 U. S. 535, is a murder case deciding that due process of law was given to the appellant. Therefore, without further going into the new cases cited in the brief of the Attorney General we say to the court that nothing new is brought out in this brief, the same being simply a renewal of the arguments advanced in the brief of Mr. Dymond.

We really cannot understand the theory on which both of these gentlemen argue for it is apparent by their brief that they admit three things:

1. They admit that the sole purpose and intent of this statute is to compel the removal into Louisiana of factories packing shrimp and oysters now situate without the state of Louisiana.

2. That were these factories to remove to Louisiana they could pack and ship, without restriction, not only the oysters packed by them, but also all by-products of the oysters.

3. The brief also admits that the ruling of the Judges in the case of Wallace v. Elmer and Louisiana v. Ferrandou was correct and that in both of these cases there was a

burden laid on interstate commerce that was beyond the power of the state to levy.

After having admitted the above facts, both briefs, and particularly the brief of the Attorney General, goes ahead at great length to explain to Your Honors that while the above is true, the act questioned is a conservation measure purely and simply, citing in support of this position one fact, which is, that the law by its title and by its words declares that it is a conservation measure.

They make no argument that the food will be conserved to the people of the state of Louisiana; that the shells or hulls of the shrimp will be conserved to the people of the state of Louisiana; that the people will thereby benefit by the use of fertilizer, chicken feed, etc., nor is there one time mentioned where this law will compel any of the shells to be re-deposited upon the reefs of Louisian as clutch; in fact, in the brief of the appellees there is admitted practically every fact stated in the affidavits offered in proof by the appellants, except the contention of the appellants that Louisiana was not a suitable place in which to engage in the operation of a canning factory, and we submit to the court here that the fact the twelve citizens of Louisiana were willing to affirm to this fact is almost overwhelming proof of this fact, considering that the citizens lived in the parishes about which this evdence was being given.

In other words, although admitting in their argument that the law is not intended to conserve anything that it allows the shipment in unlimited quantities of the products of this wild life of the state from the state, they ask this

court to uphold it as a measure aimed against the destruction of the wild life of the state so that this wild life may be saved for its people, supporting this proposition only by presenting to Your Honors the fact that the title of the bill says this is true, and that certain words used in the bill says this is true.

Without again reutterating the many authorities we have heretofore presented to the court, we respectfully say that this Honorable Court has time after time gone on record in favor of this proposition, that in a question involving the constitutional rights of citizens, especially the rght given under the commerce clause, that this court will not be bound by the words used in declaring the purposes of a statute, but that it devolves into a question for judicial determination and the court itself will look into all the facts and circumstances surrounding the act.

We shall now take up for a limited space the argument of the Attorney General to the plea of estoppel advanced in the shrimp case. The Attorney General has made mention of the participation by Mr. Chinn in certain proceedings before the legislature in Louisiana when this law was passed. We therefore shall, in a limited way, go into the facts involving this alleged estoppel. Looking at it from its worst aspect, it appears that certain factory men from Biloxi, Mississippi, were present in Baton Rouge vigorously opposing the passage of this bill. Mr. Dymond says that they later entered into a compromise about the bill. It is therefore reasonable to assume that they saw the bill would be passed and attempted to save themselves by doing what—by persuading the other side to give them a years time before the bill

went into effect. Thereupon the legislature amended the bill so as to allow this years time, and during this year, when no suit could have been commenced against the enforcement of this act because it was not in force, the Attorney General alleges that the Foster-Fountain Company fished in Louisiana. He alleges that the Foster-Fountain Company paid the tax and entered into an agreement to obey the law as it was written. Now, in opposition to this, we respectfully call to the court's attention the evidence of Mr. Chinn, found in the shrimp record, which shows that he represented no one but himself before the Louisiana legislature and that he and the other packers who were there had vigorously fought the passage of this act, and only agreed to the compromise under duress. We further respectfully show to the court that thereafter there was certain valid provisions of this act that it was the duty of our clients to obey. It was his duty to obey the provisions with reference to paying the severance tax; it was his duty to obey the provisions regarding the type of shrimp to be caught; it was his duty to obey the provision with reference to obtaining a license for a schooner; it was his duty to obey the provision regulating the time of the year in which shrimp could be caught. These were valid regulations by Louisiana of its natural resources and because of an effort to obey these regulations the appellant, Foster-Fountain Company, was compelled to contract away their constitutional right is not an estoppel, and we respectfully call to the court's attention the following cases.

In the case of Michael N. O'Brien v. John G. Wheelock, 184 U. S. 450, the one complaining against a statute had as-

sisted in getting it passed, and in deciding that this did not take away from the complaining party his right to attack an unconstitutional statute, this Honorable Court in citing the case of South Ottawa v. Perkins, 94 U. S. 267, said:

> "There can be no estoppel in the way of ascertaining the existence of a law. That which purports to be a law of a state is a law, or it is not a law, according as the truth of the fact may be, and not according to the shifting circumstances of parties. It would be an intolerable state of things if a document purporting to be an act of the legislature could thus be a law in one case and for one party, and not a law in another case and for another party; a law to-day, and not a law to-morrow; a law in one place, and not a law in another in the same state. And whether it be a law, or not a law, is a judicial question, to be settled and determined by the courts and judges. The doctrine of estoppel is totally inadmissible in the case."

We further call to the court's attention the recently decided case of Pugh v. Pugh, 32 L. R. A. (N. S.) 594, and Buck v. Kuykendell, 267 U. S. 307, 69 L. Ed. 623, especially referring the court to pages 626 and 627 of 69 L. Ed. 623, and pausing here we want to call to the court's attention that both the case of Buck v. Kuykendell, as well as the case of Geo. W. Bush and Sons v. Malloy, 267 U. S. 317, absolutely substantiates the position we take with reference to interstate commerce in that these cases decide that, although the state may regulate a highway which it owns, which it has built with its money, holding it as trustee for the people of the state and for their use and benefit, it can-

not exercise its authority over a road so as to restrict or interfere with commerce between the states.

We therefore suggest to the court that looking at it from the standpoint of the facts cited by the appellees in the brief of the Attorney General that there was no action on the part of the Foster-Fountain Company that could be construed by this court as arising to the dignity of a contract between Louisiana and the Foster-Fountain Company, and that unless the court so believed it will find no merit in the plea of estoppel.

All of the cases cited by the appellees in support of the contention of the Attorney General were cases in which the facts arose to the dignity of a contract between the parties and by which contract the party estopped had secured something of value which he still held and clearly he could not thereafter go into a court of equity with clean hands.

In the instant case, however, the record shows that from the beginning of the fight to pass this act, it was opposed by the Foster-Fountain Company. This opposition continued until defeat was apparent, necessarily they yielded to the inevitable and thereafter in carrying on the commerce, which they had a right under the constitution of the United States to carry on, they obeyed the valid features of this act complained of. In obeying the valid parts of this law they were compelled to sign away their constitutional right, that is, the right of attacking a law invalid under the commerce clause. This act was an act performed under duress in the first place, and, in the second place, there are some rights one cannot waive. Furthermore, we

respectfully call to the court's attention that any act on the part of Mr. Chinn in contracting away the constitutional right of the corporation he represented would be beyond his power as president ultra vires.

The case of Ry. Co. v. Osborn, 193 U. S. 17, 48 L. ed. 598, was a case in which a railroad company had procured a charter under a general act of the legislature. This court held that therefore the railroad company was estapped to deny the constitutionality of the act to which it owed its existence.

The case of Booth Fisheries Co. v. Industrial Commission, 271 U. S. 208, 70 L. ed. 908, is not in point. In that case an industrial corporation elected to come under the provisions of the workmens compensation act which, it was not obliged to do. The court held that since it had adopted the act in its entirety it was in no position to question the constitutionality thereof.

Appellants invoke the rule announced in Territory of Arizona v. Copper Mining Co., 233 U. S. 87, 59 L. ed. 863. The observations of the appellee upon the question of estoppel are only applicable to case No. 768. No question of estoppel is raised in case No. 769. Mr. Chinn made affidavit that he applied to the Conservation Department for the right to catch shrimp on behalf of the Foster-Fountain Co., a Louisiana corporation, having the right under its charter so to do. That he was denied this right unless he would sign an application agreeing to comply with every portion of the Conservation law.

As said in the case of Buck v. Kuykendall, 267 U. S. 307, 69 L. ed. 623, the Foster Fountain Packing Co. does not rely upon any provision of the statute assailed. He was perfectly willing to comply with all the conservation acts found in the law. The Conservation Department had no right to require of him, as a condition precedent, to the exercise of this right, and the legislature of the state of Louisiana had no right to attach, as a condition thereto, a provision depriving it of its property without due process of law, and one violating the commerce clause of the constitution of the United States. Buck v. Kuykendall, supra; F. & D. Co. v. Tafoya, supra.

In the last mentioned case this court said:

> "Coming then to the merits we assume in favor of the defendants that the state has the power and constitutional right artibrarily to exclude the plaintiff without other reason than that such is its will. But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as a part of a scheme to accomplish a forbidden result. Frick v. Pennsylvania, June 1, 1925 (268 U. S. 473, 69 L. ed. 1058, 42 A. L. R. 316, 45 Sup. Ct. Rep. 603); American Bank & T. Co. v. Federal Reserve Bank, 256 U. S. 350, 358, 65 L. ed. 983, 989, 25 A. L. R. 971, 41 Sup. Ct. Rep. 499; Badders v. United States, 240 U. S. 391, 394, 60 L. ed. 706, 708, 36 Sup. Ct. Rep. 367; United States v. Reading Co. 226 U. S. 324, 357, 57 L. ed. 243, 254, 33 Sup. Ct. Rep. 90. Thus the right to exclude a

foreign corporation cannot be used to prevent it from resorting to a federal court (Terral v. Burke Constr. Co. 257 U. S. 529, 66 L. Ed. 352, 21 A. L. R. 186, 42 Sup. Ct. Rep. 188); or to tax it upon property that by established principles the state has no power to tax (Western U. Telg. Co. v. aKnsas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190), and other cases in the same volume, and later that have followed it; or to interfere with interstate commerce (Sioux Remedy Co. v. Cope, 235 U. S. 197, 203, 59 L. ed. 193, 197, 35 Sup. Ct. Rep. 57; Looney v. Crane Co. 245 U. S. 178, 188, 62 L. ed. 230, 235, 38 Sup. Ct. Rep. 85; Western U. Telg. Co. v. Foster, 247 U. S. 105, 114, 62 L. ed. 1006, 1016, 1 ALR 1278, P. U. R. 1918D, 865, 38 Sup. Ct. Rep. 438). A state cannot regulate the conduct of a foreign railroad corporation in another jurisdiction, even though the company has tracks and does business in the state making the attempt. New York L. E. & W. R. Co. v. Pennsylvania, 153 U. S. 628, 38 L. ed. 846, 852, 14 Sup. Ct. Rep. 952."

There is another complete reply to the plea of estoppel filed by the appellees in cause No. 768. The plea is one to the jurisdiction of the court and asked that the original complaint be dismissed therefor. The three-judge court took no action thereupon, and no cross-appeal has been taken by the appellees in the case. So we respectfully submit that the plea of estoppel is not really presented and before the court in the case.

There is still another answer to the argument in that the plea of estoppel, if good, would have no application to the allegations of discrimination in the original bill of com-

plaint and the proof offered in support thereof. In other words, even if the appellants in case No. 768 agreed to comply with the laws of the state of Louisiana, they did not agree to be bound by the discriminatory construction placed thereupon complained of in the original bill of complaint and shown by the proof.

Other authorities directly in point will be found original brief page 147.

In view of the fact that the question of estoppel is not raised and not applicable to case 769, and in view of the further fact that the rights of many other persons than the appellants in cause No. 768 are involved, we invoke the rule announced by this court in Wright v. Davidson, 181 U. S. 371, 45 L. ed. 900, wherein the court used the following language:

> "However, as we learn from this record that there are others than the appellees concerned in the question of the validity of the act of congress, and as the decision of the court of appeals, by declaring the act void as to the appellees, operates to defeat or suspend proceedings under it, and under other existing acts of congress in similar terms, respecting public improvements in the District, we prefer to pass by the question whether the appellees are estopped by having made the dedication imposed as a condition precedent to the opening of the streets. and to place our decision upno the question discussed by the court of appeals, and which controlled its decision; namely, that of the constitutionality of the act of Congress under which the proceedings were had."

Counsel cite the case of Turner v. Maryland, 107 U. S. 38, 27 L. ed. 370. The statute there under consideration was passed by the state of Maryland as an inspection law under clause 2 section 1 art. 1 of the constitution of the United States, in the following language:

> "No State shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net proceeds of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such law shall be subject to the revision and control of the Congress."

The acts now under review are in no sense inspection acts.

In the case of Foote v. Stanley, 232 U. S. 494, 58 L. ed. 687, this court held invalid an inspection law of the state of Maryland, because the tax levied was in excess of the amount required for inspection purposes.

In the case of Patapsco Guana Co. v. N. C. 171 U. S. 345, 43 L. ed. 191, this court sustained an inspection law on commercial fertilizers in excess of the amount necessary to make the inspection. The court used the following language:

> "Whenever inspection laws act on the subject before it becomes an article of commerce they are confessedly valid, and also when, although operating on articles brought from one state into an-

other, they provide for inspection in the exercise of that power of self-protection commonly called the police power.

"No doubt can be entertained of this where the inspection is manifestly intended, and calculated in good faith, to protect the public health, the public morals, or the public safety. Minn v. Barber, 136 U. S. 313, 34:455, 3 Inters. Com. Rep. 185). And it has now been determined that this is so, if the object of the inspection is the prevention of imposition on the public generally."

The tax in this case is not made as an inspection tax and has absolutely no relation thereto.

In conclusion we want to call to the court's attention the splendid opinion of Judge Holmes, which is contained in the latter attached to the Attorney General's brief as a part of the appendix thereto. The Attorney General states that Judge Holmes afterwards waived that opinion. We respectfully say that the only act of Judge Holmes evidencing that the opinion was waived was simply his courteous act of joining with the other two Judges in signing the order which had been arrived at by the majority of the statutory court. We consider that this was both his duty as a Judge and a gentleman, but the court can readily see from the forceful manner in which his position was taken that Judge Holmes was of the opinion that the law was unconstitutional.

In conclusion, we desire to say that necessarily the printed argument in this cause being already very voluminous, we are unwilling to further burden the court with a

more complete exposition of all the facts and circumstances in the case; however, before departing, we want to again call Your Honors' attention to the position taken by the appellee whereby they come into this Honorable Court and say this is a valid law, it is valid because it is a conservation measure, it is valid because it aims at preserving a food supply to the people of Louisiana, and acting under the decisions of this and other courts sustained this argument, we ask the court to declare the law constitutional; however, we further say to the court that what we want is to declare it constitutional merely because of its wording, for, in fact, its intent is not to conserve to the people of Louisiana any food supply, it is not to prevent the destruction of the wild life of Louisiana, it is not to give to the citizens of Louisiana the exclusive right to reduce to possession this wild lfe, except to certain preferred citizens, but its real object and purpose is to add to the wealth of Louisiana and to the taxable values of Louisiana by compelling persons in other states to remove their factories to Louisiana and there manufacture a raw product which the state of Louisiana has parted title with upon collecting a severance tax and has allowed to go out into general commerce in limitless quantities and without restriction.

We further respectfully urge upon the court that while a state can confine an article owned by the state in its original state to internal commerce, that this commerce must in fact be internal and not in name only. That this Honorable Court never has, and, in our opinion, never will agree

to any definition of commerce between the states except such definition as will include all intercourse and business transactions which began in one state and ended in another state. That any other position would be fraught with the very greatest danger to the intercourse upon which the nation's most vital welfare is founded.

The State of Louisiana is by this law attempting to drive a wedge that will tend to split the hitherto solid opinion of all the courts of the land that interstate commerce was without the power of a state to interfere with, and, regardless of the fine words and smug expression in which their law is clothed, we believe that Your Honors will see its true intent and in our opinion we cannot better conclude our argument than by quoting the words of Mr. Hale in Thurlow v. Massachusetts, 5 How. 504, when in closing his argument he addressed this Honorable Court as follows:

> "My clients rely with confidence upon that protection to commerce which this Court on divers occasions have extended, though in so doing they have been under the necessity of pronouncing the legislation of more than one State invalid and unconstitutional. It was to protect commerce that this Union was established. Take away that power from the General Government, and the Union cannot long last ..... I leave this case, in the confidence that my clients, in common with all the other citizens of this whole country, will ever find (as they ever have in time past) in this Court, a full and ample protection for their constitutional

rights, against which the waves of fanaticism, as well as of faction, may beat harmlessly."

We respectfully submit that the decrees appealed from should be reversed.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1927

No. ~~768~~ 68

FOSTER FOUNTAIN PACKING COMPANY, INC., and SEA FOOD COMPANY, Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

No. ~~769~~ 69

L. O. JOHNSON, JR., and SEA FOOD COMPANY, TANAS HEBERT, ET AL., Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

The Above Cases Consolidated by Order of This Honorable Court.

Percy Saint, Attorney General;
Peyton R. Sandoz, Asst. Atty. General;
Michael M. Irwin, Asst. to Atty. General.
John Dymond, Jr.,
Leander H. Perez,
Of Counsel.

MONTGOMERY-ANDREWS PRINTING CO., INC., 527 CHARTRES, N.O.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 768

FOSTER FOUNTAIN PACKING COMPANY, INC., and SEA FOOD COMPANY, Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

No. 769

L. O. JOHNSON, JR., and SEA FOOD COMPANY, TANAS HEBERT, ET AL., Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

The Above Cases Consolidated by Order of This Honorable Court.

STATEMENT.

By reason of the fact that the above numbered and entitled causes have been consolidated by an order

of this Honorable Court, they will be considered and treated of in this brief as one proceeding, because the constitutional questions advanced in each are almost identical.

The plaintiffs in suit No. 768 endeavor to contest the legality and constitutionality of Act 103 of the Legislature of Louisiana of 1926, and particularly Sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said Act, as being in violation of the Constitution of the United States, these specific alleged violations will be hereinafter detailed. The aforesaid Act is ordinarily known and referred to as the Louisiana "Shrimp Law."

In the suit No. 769 a similar attack is made upon Act 258 of the Legislature of Louisiana of the year 1926, and particularly Sections 1, 2, 3, 4, 23 and 24 of said Act, the aforesaid Act being ordinarily referred to as the Louisiana "Oyster Law."

In each of the aforesaid cases the plaintiffs in error attempted to obtain an injunction to restrain the enforcement of the Shrimp and Oyster Laws, and, as is usual in such cases, a temporary restraining order was issued in each, and upon final hearing the restraining orders were recalled and the prayer for a permanent injunction denied. Thereupon, application was made for an appeal to this Honorable Court, which was granted. There was no particular opposition to this application on the part of the State of Louisiana or any of the defendants in error, who are really for all intents and purposes the representatives of the State of Louisiana, but there was no specific consent to the granting of the appeal by the District Court. The issues involved while numerous, because of the al-

leged unconstitutionality of the two acts, are comparatively simple and have been determined by this Honorable Court in numerous decisions.

The questions really involved are whether or not the State of Louisiana has a right to adopt laws to conserve its natural resources. The natural resources involved in these two proceedings are Shrimp and Oysters. The State of Louisiana has, by various statutes dating back quite a number of years, endeavored to preserve for its inhabitants certain articles of food, such as game, fish and oysters. The negligence of our sister State in this respect has caused it to exhaust and consume the very articles of food which Louisiana desires to preserve for itself, and now that the supply of that State is practically exhausted Mississippi seeks to prey upon and utilize and consume that which Louisiana has for years past taken the precaution to preserve.

THE EVIDENCE.

We will not attempt to detail the evidence relied upon by the plaintiffs in error, because the record contains each and every affidavit submitted, but the burden of these affidavits, as indicated by them, is that the motive on the part of the plaintiffs in error in desiring to use and utilize the Shrimp and Oysters of Lousiana is that the State of Louisiana is not qualified, so to speak, to properly can and sell these food products, because of the fact that at the points where shrimp and oysters are most available the conditions are such that it is almost impossible for any person to live because of the prevalence of mosquitoes and some imaginary insect which they specify as "green-head."

The preposterous and absurd contention is contained in these affidavits that the presence of these two insects make it impossible for any human to dwell in the locality where shrimp and oysters are still found, "unless he be so native to the soil and acclimated to the action of these insects that he can suffer and stand a continuous attack of these insects, which is sufficient to drive the ordinary man mentally insane." (See Tr., p. 79).

The same absurd reasoning is contained in all of the other affidavits supplied by the plaintiffs in error. How such puerile contentions can be urged in cases of vast importance, such as these, is difficult to understand.

However, these same affidavits, aside from the very unwarranted attack by these supposed Mississippians upon alleged conditions in their sister State of Louisiana demonstrate, on their face, that Mississippi has been neglectful of her interests in conserving her natural resources. The same waters of the Gulf that bathe her shores lap the shores of Louisiana, but unfortunately for Mississippi, the greed of those engaged in the Shrimp and Oyster industries has exhausted her supply, while Louisiana has for years past taken the precaution to conserve her supply.

We do not consider that much language should be wasted with reference to the mosquitoes and greenhead theory, because we believe that this Court can well take judicial cognizance of the fact that mosquitoes are possibly as plentiful, if not more so, in Mississippi than they are in Louisiana, and are quite common in very many other States of the Union.

Another contention of absolute insignificance advanced by the plaintiffs in error is that:

> "The coast of Mississippi is peculiarly adapted to the canning of shrimp on account of its clear, pure water, but that it is not practical to can and pack shrimp west of the Mississippi River in the State of Louisiana, for the reason that there is a greater lack of community life and the absence of pure water needed in the canning and packing of these shrimp to make the same of high market value." Tr., p. 85.

The other affidavits submitted by plaintiffs in error contain similar statements, but no proof of these vague conclusions has been offered, and none could have been offered, for the reason that no man of probity, acquainted with conditions in Louisiana, would condescend to have made any such erroneous and unjust statement.

The evidence clearly shows that the plaintiffs in error not only appeared before the Legislature of the State of Louisiana on each occasion, that is to say, upon the occasion of the adoption of the "Shrimp Act," and upon the occasion of the adoption of the "Oyster Act," to exert every influence that they could to have the laws so framed that they could utilize Louisiana's products, which their negligence had caused them to lose for themselves; but when they found that they could not they actually acquiesced in both Acts, their sole and final condition being that the laws would not become immediately operative, but that practically a year should elapse before they should become effective.

Thereafter, these same plaintiffs engaged in business in Louisiana; took out licenses, and in every way acknowledged and admitted the right and authority of the State of Louisiana to adopt the laws against which they now complain.

The foregoing statement has reference to the plea of estoppel filed in the Shrimp law case, and which we now discuss.

ESTOPPEL.

The plea of estoppel filed in record No. 768 (Tr. 37) by respondents, applies only to the shrimp case, but a careful examination of all the affidavits appearing in record No. 769 would make it appear that it could be applied to the oyster case as well.

It was our contention in the Court below, and we now renew it, that the open and active participation by complainants, its agents, and representatives in bringing about the provisions of Act 103 of the Legislature for the year 1926, in its final passage estops complainants from asserting that said Act is unconstitutional.

Act 103, known as the "Shrimp Law," at the time of its introduction in its original form and if it had passed and was adopted, was to go into effect at once, but due to the fact that various interests representing the canning and packing industries of the State of Mississippi had so vigorously opposed this legislation in its original form, and upon the serious requests of complainants, through their representatives, that if the date of its enforcement was postponed one year,

to-wit, from July, 1926, until June 15, 1927, so that the Mississippi canneries and packers would have ample time to acquire sites in Louisiana if they saw fit, the opposition to the passage of this measure would cease.

Whereupon, Act 103 of 1926 was passed and approved with the provision asked for by complainants in the following language, to-wit (Tr. 123, No. 768):

"Amendments to House Bill No. 177 by Mr. Ellender.

On page 18 of the printed bill at the end of line 30 strike out the period and insert a comma, followed by the words 'provided that, in order to permit canning factories located beyond the limits of this State which have heretofore been permitted to take salt water shrimp out of the State for canning purposes to adjust their business to the conditions imposed by this Act, the provisions of this Act which require all salt water shrimp to be peeled or removed from their hull or shell in Louisiana and the shrimp head and hull or shell to be left in Louisiana shall not go into effect until June 15, 1927, as to those shrimp canners who shall have obtained from the Department of Conservation permits permitting such canneries until June 15, 1927, to remove from the State salt water shrimp unpeeled for canning in factories located beyond the limits of the State, conditioned upon the right being reserved to the Department of Conservation of Louisiana to revoke any such permit upon the failure to be determined as

a matter of fact, after hearing, by the Department of Conservation of Louisiana, that such permittee or licensee has failed to comply with the conditions imposed in such permit, and the Commissioner of Conservation shall be authorized to issue permits in accordance herewith, which permits shall expire June 15th, 1927.

It is the intention and sense of this exception that the canning factories located out of the State which have heretofore gotten their salt water shrimp from Louisiana shall be permitted to continue to do so under former conditions, until June 15th, 1927, except that the closed seasons herein established shall become effective upon the due promulgation of this Act.

(Signed) Jules G. Fisher,
(Signed) Donald Laffe,
(Signed) Delos R. Johnson.

Approved:

(Signed) John Dymond, Jr.
(Signed) Chas. L. Wise.
(Signed) Arthur J. O'Keefe, Jr."

In order to show the exact situation that prevailed when this Act was up for passage, we take the liberty of setting forth an excerpt from the affidavit (Tr. 118, No. 768) of Mr. John Dymond, who at that time, as evidenced by his approval of the amended section of Act 103 of 1926 above set forth, acted as leading counsel in having Act 103 of 1926 passed.

"During the said legislative session and the consideration of said legislation by the

House and the Senate there appeared people representing the proponents of said measures, and people representing the opponents of said measure, and that among those representing the opponents of said measure were the canning and packing interests of the State of Mississippi, and among the opponents of said measure was the Foster Fountain Company, Complainant herein, as represented by R. Hart Chinn, President, and that the said R. Hart Chinn addressed the Committee of the House considering said legislation in opposition to said legislation; that the Mississippi interests were represented by Arthur J. O'Keefe, Jr., an Attorney at Law, residing in the City of New Orleans, who appeared on behalf of the Mississippi interests, including Foster Fountain Company, Complainant, in opposition to said proposed legislation, and that said Mississippi interests were further represented by Honorable John J. Kennedy, Mayor of Biloxi, Miss.;

"That at the time of the introduction of said House Bill No. 177, and at the time of its consideration by the Committee of the Senate, said measure proposed to go into effect at once. Whereupon, the request was made on behalf of the Complainant and others, that opposition to said measure would cease if the date of its enforcement was postponed one year, or until June 15, 1927, and said measure thereupon was passed by the House of Representatives and Senate, and approved by the Governor on July 18th, 1926,

containing a provision to the effect that the law should not go into effect until June 15th, 1927, in order to permit any Mississippi interests to acquire factory sites in Louisiana."

The above excerpt, together with the original compromise and agreement, copy of which is set forth in full *supra*, clearly demonstrates the active participation of complainants. Coupled with this outweighing evidence is the statement of Mr. R. Hart Chinn, President of the Foster Fountain Company, one of the complainants herein (Tr. 68, 70, No. 768), and the appreciative letter of Hon. John J. Kennedy, Mayor of Biloxi, Mississippi, who also represented the Mississippi interests (Tr. 124, No. 768):

"When it became apparent that, in spite of his objections, as well as the objections of other persons, the bill (No. 77, R. No. 768) would be passed, affiant, as he had the right to do, acquiesced in the amendment postponing the effective date of the Act for one year."

"City of Biloxi,
John J. Kennedy, Mayor,

Biloxi, Mississippi,
June 24, 1926.

Mr. John Dymond, Jr., Atty.,
Maison Blanche Building,
New Orleans, La.

My dear John:

I thank you for the copies of the Shrimp Bill that you were kind enough to send me and if there are any charges for same, if you

will let me know the amount, I will send you a check.

I suppose the compromise was best for all parties concerned but I want to repeat to you that in my honest opinion the future will show that my opponents are absolutely wrong about this matter, and I believe the future will convince them of this fact.

Whenever you are on the Coast would be glad to have you come to Biloxi that I might open your eyes showing you developments.

With very best wishes, I am

Sincerely yours,

(Signed) Jno. J. Kennedy.

After Act 103 of 1926 had gone into effect, that is, after June 15th, 1927, complainant, Foster Fountain Company, Inc., applied for and did receive from the Department of Conservation of the State of Louisiana licenses and permits for the taking of salt water shrimp from the waters of Louisiana, and since the licenses (Tr. p. 50-52; R. 768) and permits issued by their very terms:

> "That every license issued by the Department of Conservation to any resident person, firm or corporation, under the laws of the State, authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing, or drying purposes shall be issued only upon a written application in which it shall be stipulated as a matter of contract

> that the applicant will faithfully and fully comply with the laws of this State, and the rules and regulations of the Department of Conservation and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in the shrimp industry that does not fulfill the requirements of (fol. 49) the specifications of the Board of Health of the State of Louisiana adopted for sanitary regulations, the right of appeal being reserved to such applicant to the Court having jurisdiction thereof to review the findings of the Department of Conservation on the subject."

constitute a contract between applicant and the State of Louisiana, they are therefore estopped from contesting any section or sections of Act 103 of 1926 pertaining to its constitutionality.

Authorities sustaining the above proposition are numerous, and we herewith submit the following, contending that our plea of estoppel should be maintained in view of their holdings.

Shepard v. Barron, 194 U. S., 553, 48 L. Ed., 1116:

In this case plaintiff, a property holder, filed his bill in the Circuit Court of the United States to enjoin a county treasurer from taking proceedings for the

collection of the balance of an assessment for a local improvement upon his property, on the ground that the Act under which the assessment was being made was unconstitutional. The defense was made that because the property holder had joined in a petition for the making of the assessment, he was precluded from setting up the unconstitutionality of the Act.

Mr. Justice Pepper, in deciding the case, first stated that both parties agreed that the statute was void and in violation of the State Constitution, and that the invalidity of the statute had been declared by the Circuit Court of Appeals. He then discussed the conduct of the complainant with a view of determining whether it precludes him from raising the objection of unconstitutionality, and said in part:

> "It does not in the least matter what we may call the defense, whether it be estoppel or implied contract, or one partaking the nature of both, the result arrived at being that the plaintiffs are told that under all the facts proved in the case they cannot set up the unconstitutionality of the Act, or that they are bound by their contract to pay the assessment.
>
> "On principles of general law, we are satisfied that the plaintiffs are not in a position to assert the unconstitutionality of the act under which they petitioned that proceedings should be taken, and that the assessment should be made in accordance with those provisions."

Under some circumstances a party who is illegally assessed may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. Such a case would exist if one should ask for and encourage the levy of the tax which he subsequently complains; and some of the cases go so far in that direction as to hold that a mere failure to give notice of objections to one who, with the knowledge of the person taxed, as contractor or otherwise, is expending money in reliance upon payment from the taxes, may have the same effect. Cooley, Taxn., p. 573, and cases cited in Note 5; Tash v. Adams, 10 Cush., 252; Bidwell v. Pittsburgh, 85 Pa., 412, 27 Am. Rep., 662; Shutte v. Thompson, 15 Wall., 151, 21 L. Ed., 123.

The above case of *Shepard v. Barron* was cited and approved in *Rand-McNally & Co. v. Kentucky, 215 U. S., 583, 54 L. Ed., 337.*

In *Wight v. Davidson, 181 U. S., 371, 45 L. Ed., 900, 21 Sup. Ct. Rep., 616,* this Court, while not positively deciding the proposition, yet strongly intimated *(p. 377, L. Ed., p. 904, Sup. Ct. Rep., p. 618)* that by reason of the acts of the appellees they were not in a position to question the validity of the statute there under consideration, but as there were others than the appellees concerned, and a decision of the Court of Appeals had declared the act void as to the appellees, it was thought better to pass by the question whether they were estopped by having made the dedication provided for in the act, and to decide the question of the constitutionality of the Act of Congress under

which the proceedings were had. The Act was held to be valid.

6 Ruling Case Law, p. 94, Sec. 95:

PROCURING PASSAGE OF LAW OR ELECTING TO PROCEED UNDER IT.

"*A person in any way procuring the passage of an act is generally considered as estopped, and as not being entitled to question its validity. (Shepard v. Barron) supra. It is not necessary in order to work an estoppel that active efforts should have been made to secure the passage of the statute in question.* The rule is now generally recognized that one who invoked the provisions of a law may be denied the right to question its constitutionality, and cannot even in subsequent litigation aver its unconstitutionality as a defense. Under this principle a creditor electing to avail himself of proceedings under a statute cannot raise an objection that the law did not constitutionally apply to his case. Where the provisions of a statute are taken advantage of and the bond required by it is filed, the estoppel as to the constitutionality of the statute, extends not only to such creditor, but to the sureties on his bond."

Andrus v. Police Jury, 41 La. Annual, 697, 6 So., 603:

"A taxpayer who petitions for the passage of an ordinance levying a special tax, who actively supports and votes for the ordi-

nance when submitted to the votes of the taxpayers, who has so acted in advancement of his own interest, and who has secured advantage from the passage of the ordinance, upon which other parties have acted, is estopped from setting up the illegality and unconstitutionality of the tax as a defense against paying it."

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"And now, after thus actively cooperating in securing the levy of this tax, and after he has entered into secure enjoyment of all the benefits contemplated and conferred by the same, he seeks to escape payment of the tax by urging objections to the legality and constitutionality of the very ordinance which he petitioned the board to pass, which he pledged himself actively to support and which he actually voted for.

"It is perfectly clear that he is estopped from urging such objections. All authorities accord in maintaining estoppel in such a case."

Cooley on Taxation, p. 817, says:

"It sometimes happens that a party who complains of illegal taxation has been so connected with the proceedings in voting, levying or collecting the same, that it would be unjust and inequitable to others or to the public that any remedy should be given him in respect to the illegality. Such a case would

exist if one in respect to some interest of his own should petition for or otherwise actively encourage the levy of the tax of which he subsequently makes complaint."

Bigelow on Estoppel, p. 509, 6th Edition, says:

"*This doctrine* (of estoppel) *has been held to apply to the case of persons who had procured the passage of an act of the Legislature under which they had acted and obtained advantage;* and the parties were thereafter held estopped to show that the act was unconstitutional, though it had been so pronounced by the courts to those who had not participated in its passage."

Burrough on Taxation, Sec. 38, says:

"*It is a principle well recognized that all who aid in procuring an act of the Legislature, or who ratify it after its passage, are bound by it.* * * * The principle requires the assent of those who are to bear the burden; if a number of citizens procure an enabling act to allow a city to subscribe to the stock of a railroad, it binds those who procure it and those who ratify, but those who do not assent to it are not bound."

Moore v. City, 32 La. An., 745:

"There are cases in which a law, although unconstitutional, must be sustained, because the party who makes objection has, by prior action, precluded himself from being heard."

Ferguson v. Landram, 5 Bush (Ky.), 230, 96 Am. Dec., 35:

Syllabus:

> "One who procures passage of act, or who afterwards sanctions it, or derives interest or consideration from it, should not be allowed to retain his advantage or keep his consideration, and then repudiate the act as unconstitutional."

The above case is one where, during the Civil War, the Federal Government required a certain number of men to be provided by a certain date or drafted. Many not desiring the service met and subscribed an amount to be given those who would volunteer in order that they might not be drafted, appointed a committee to borrow the money and obtain an act of the Legislature to authorize a tax to meet the loan.

The Court further said:

> "Upon what principle of exalted equity shall a man be permitted to receive a valuable consideration through a statute procured by his own consent or subsequently sanctioned by him; or from which he derives an interest or consideration, then keep the consideration and repudiate the statute as unconstitutional?"

Moreover, complainants having suggested the manner by which they would abide by the provisions of Act 103 of 1926, and having passed in the manner as

suggested by them, by which they received benefits and immunities which it bestowed, to-wit: postponement of its enactment for one year—they cannot now escape its burdens by asserting that it is unconstitutional. The accepting and active participation by complainants constitutes a waiver and estops them from asserting such an attack.

See:

Booth Fisheries Co., et al., v. Industrial Commission of Wisconsin, et al., 271 U. S., 208, 46 Sup. Ct. Rep., 491, 70 L. Ed., 908.

Daniels v. Tearney, 102 U. S., 415, 26 L. Ed., 187.

Grand Rapids & I. R. Co. v. Osborn, 193 U. S., 17, 48 L. Ed., 598.

It is fundamental that anyone that asks equity must do equity, and he who comes into an Equity Court must come in with clean hands. Therefore, in view of the above facts and authorities sustaining our contention, it seems to us that the proposition and only proposition this Court has to determine is—can complainants, all of whom, either directly or indirectly, participated in having Act 103 of 1926 passed in the manner in which it was finally adopted, and who have received a benefit therefrom, can now come into Court and ask for protection? To our way of thinking, complainants, as between themselves and the State of Louisiana, have failed to do equity and, therefore, do not come into Court with clean hands, consequently, they are estopped in their attempt to assail Act 103 of 1926 as being unconstitutional.

ARGUMENT.

The plaintiffs in error contend, with reference to the Shrimp Law, that Sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of the Act, No. 103 of 1926, are in contravention of and violative of paragraph 3, subdivision "a," Article I of the Constitution of the United States, in that the aforesaid sections of the aforesaid act contain provisions which are violative of the interstate and foreign commerce clauses of the Federal Constitution.

We divert to call the Court's attention to the fact that the same contentions are levelled against the "Oyster Law," officially known as Act 258 of the Legislature of Louisiana of the year 1926, and since these cases have been consolidated we shall present our argument in connection with the Shrimp Law, in the hope and belief that the same argument has like application to the "Oyster Law," this for the purpose of avoiding needless repetition of argument and burdening the Court with a useless resume of legal and constitutional questions which are determinative, in our humble opinion, of the issues of both cases.

To the contention that the Shrimp Act, No. 103 of 1926, is violative of the interstate and foreign commerce clauses of the Federal Constitution, our answer is that the aforesaid Act specifically provides:

> "That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said salt water shrimp shall be and are hereby declared to be the property of the State; and to remain the property of the State

until the title thereto shall have been divested in the manner and form authorized by said Act."

That the Act specifies the terms and conditions upon which the title of the State to the shrimp may be divested, and particularly accentuates the fact that the shrimp are, and continue to be, the property of the State until all of the conditions of said Act shall have been complied with. Therefore, the shrimp cannot, in a legal sense, become an article of commerce until the title of the State has been divested. So that, any complaint that the statute interferes with the interstate commerce clause of the Constitution is not only premature, but unfounded in law, unless it is shown that title of the State has been divested in the manner which the Act has prescribed.

The primary purpose of the statute under consideration is to increase the industries of the State, develop its resources, and add to its wealth and prosperity. The two particular industries contemplated by the acts in controversy are the Shrimp and Oyster industries, which the Legislature intended to develop, and to add to the wealth and prosperity of the State, by causing to be located within her borders the necessary plants and properties for the proper canning and packing of oysters and drying and canning of the shrimp, and for the manufacture of fertilizer from the hulls of the shrimp, to be used for the benefit of the State, and primarily to be sold within its borders.

This authority on the part of the Legislature to conserve a very important natural resource of the State can no longer be doubted, since it is now well estab-

lished in the jurisprudence of Louisiana and in the other States of the Union and of the United States Supreme Court, that

> "the Fourteenth Amendment, broad and comprehensive as it is, nor any other amendment of the Federal Constitution, was designed to interfere with the powers of the State, sometimes termed its *police power*, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate *so as to increase the industries of the State*, develop its resources, and add to its wealth and prosperity."

This specific principle is set forth, recognized and affirmed in the following cases by the United States Supreme Court:

Barbier v. Connolly, 113 U. S., 31, 28 L. Ed., 923.

Holden v. Hardy, 169 U. S., 366, 42 L. Ed., 780.

Dent v. West Virginia, 129 U. S., 114, 32 L. Ed., 623.

Mugler v. Kansas, 123 U. S., 623, 31 L. Ed., 623.

Munn v. Illinois, 94 U. S., 113, 24 L. Ed., 77.

Budd v. New York, 143 U. S., 517, 36 L. Ed., 247.

Smyth v. Ames, 169 U. S., 466, 42 L. Ed., 819.

The foregoing principle was expressly upheld by the Supreme Court of Louisiana, in *Lacoste v. Depart-*

ment of Conservation, 151 La., p. 909, 92 So., 381, which case found its way to the United States Supreme Court and was there affirmed, and is reported in *263 U. S., 545, 68 L. Ed., 437.*

We point out that insofar as legal principles involved in this case are concerned, there is no material distinction between fish and any of the other wild life of the State. Fish and game and fur-bearing animals have long been recognized as a part of the natural resources of the State, a part of its wild life, over which the State, in its sovereign capacity, has absolute and almost unlimited dominion.

> "Fish, so long as they remain unconfined in their natural element and are not taken and reduced to possession, are not the subject of private property, but are public property; * * * and, in the United States, are considered to be the property of the state in whose waters they may be found, not as proprietor, but in its sovereign capacity, as the representatives and for the benefit of all of its people in common, and the ownership thereof cannot be claimed by any particular individual."
>
> *26 Corpus Juris, Sec. 7, pp. 596, 597.*
> *Gratz v. McKee, 258 Fed., 335;*
> *169 C. C. A., 351; 260 U. S., 127, 67 L. Ed., 167.*

So that, no natural resource, until it is reduced to private possession, can become the subject of commerce; and since shrimp and oysters, in Louisiana, can only become private property under certain specified

conditions established by statute, no one has a right to complain that the provisions of the statute interfere with interstate commerce, until he has first shown that he has reduced the shrimp and oysters to private possession.

In *12 Corpus Juris, Sec. 74, p. 61*, the principle is laid down that a State may, without unduly interfering with interstate or foreign commerce, prohibit the citizens of other States from fishing within its limits, as navigable waters, their beds and contents, are State property.

In support of this decision is cited:

McCready v. Virginia, 94 U. S., 391, 24 Law Ed., 248.
Smith v. Maryland, 18 How., 71, 15 Law Ed., 269.
State of Alabama v. Harrub, 95 Ala., 176, 10 So., 752, 15 L. R. A., 761.
State v. Medbury, 3 R. I., 138.
Organ v. State, 56 Ark., 267, 19 S. W., 840.
State v. N. P. Express, 58 Minn., 403, 59 N. W., 1100.
Territory of Idaho v. Evans, 7 L. R. A., 288.

A leading case of the United States Supreme Court dealing with this proposition, is *Geer v. Connecticut, 161 U. S., 519, 40 L. Ed., 793*, wherein it is held

> "that a state has the absolute and unconditional right to enact legislation to prohibit absolutely the removal of game from the State."

This case has been upheld and affirmed in practically every decision relating to wild life handed down by the United States Supreme Court since, and has been quoted and relied upon as authority by the Supreme Court of practically every State in the Union. Therefore, if the State has the unlimited right to prohibit absolutely the removal of its fish, game and other wild life from the State, it is clear that it may permit the removal of such wild life from the State under certain prescribed conditions, and that is all that Act 103 of 1926 contemplates or provides for.

In fact, the Lacy Act, *Sec. 242, 35 Stat. at Large, page 1137 (U. S. Comp. St., Sec. 10412)* makes it unlawful to transport or deliver to any carrier for transportation the dead bodies or heads of any animals or birds killed or shipped in violation of State laws.

The identical principle was recognized by the United States Supreme Court, in the *Lacoste* case, already referred to.

One of the leading cases relating to the ownership of fish, and the conditions upon which the same may be permitted to be shipped out of the State under legislative enactment, is *Organ v. State, 56 Ark., 267; 19 S. W., 840,* from which we quote, as follows:

> "The ownership of fish is in the state for the benefit of its people in common, and the Legislature has the right to permit individuals to catch them upon such terms and conditions as it may impose, and to restrict the property acquired in them when caught to such extent as it deems proper. It may pro-

hibit catching them entirely, or for a specified season; or it may permit them to be caught for the use of the person who makes the catch, and withhold the right to sell them, or ship them for sale. When preserved for the common benefit of the people of the state, they are not articles of commerce in any sense, and we cannot see that they become such simply because the legislature permits them to be caught by individuals for use within the state only. One who catches them had originally no separate property in them, and no right to acquire it except as the Legislature might provide. As all right of property in them is derived from the state, it is subject to such terms as the Legislature imposes. It saw fit in the act assailed to confer a right of property, but to so limit it that the article should not be shipped from the state, the purpose being to restrict the use to those who originally owned it in common. The restriction was imposed by right of ownership, and not in the exercise of any assumed power to regulate the commercial uses of private property. Under this limitation, fish never pass from the dominion of the state as proprietor, or become articles of commerce, in the sense contended for by the defendant, because the qualified property right is conferred upon condition that the use shall be restricted and shipment from the state not allowed. It follows that the act does not violate the Commerce Clause of the Federal Constitution, and it could not be seriously con-

tended that it violated any other constitutional provision."

Another case in point is *State v. Northern Pacific Express Co., 58 Minn., 403, 59 N. W., 1100,* from which we quote, as follows:

> "On the second question the defendant's contention is that the provisions of the act prohibiting the shipment out of the state of fish caught within the state unlawfully interferes with interstate commerce. The complete answer to this is that the fish had never become articles of commerce, within the meaning contended for by defendant's counsel. Under the laws of the state, they had, it is true, become private property, but of a qualified and limited character; one of the attached limitations being that they should not be shipped out of the state, that is, should not become the subject of interstate commerce. The purpose of such a provision as a means of preventing a rapid and undue depletion of certain kinds of game has already been adverted to in the cases just mentioned (State v. Rodman and State v. Cobb). Similar provisions are very commonly found in laws for the preservation of game and have been generally upheld as valid."

It is further contended that the aforesaid sections of the Act 103 of 1926 are violative of Article I of the Fourteenth Amendment to the Federal Constitution, in that they serve to deprive plaintiffs of their property without due process of law.

It must be borne in mind that plaintiffs have no property in shrimp and oysters until they have complied with every provision and condition set forth in the "Oyster and Shrimp" statutes; that the shrimp and oysters remain absolutely the property of the State of Louisiana, with only a qualified and limited ownership in the plaintiffs, until such time as the plaintiffs have complied with the laws of Louisiana on the subject matter. Hence, it would be legally impossible to deprive plaintiffs of their property without due process of law, unless and until they have acquired a property right in the shrimp and oysters.

The *Lacoste* case, already referred to, disposes of this contention fully.

It is pointed out that the provisions of the aforesaid Act of 1926 apply to all persons in like circumstances and conditions. This being true, it has been repeatedly held by the United States Supreme Court that

> "the Fourteenth Amendment legitimately operates to extend to the citizens and residents of the State the same protection against arbitrary State legislation affecting life, liberty, and property, as is offered by the Fifth Amendment against similar legislation by Congress; but the Federal Courts ought not to interfere when what is complained of amounts to the enforcement of the laws of a State applicable to all persons in like circumstances and conditions, and the Federal Courts should not interfere unless there is

> some abuse of law amounting to confiscation of property or deprivation of personal rights."

A leading case dealing with this particular phase of plaintiff's suit is that of *Silz v. Hesterberg, 211 U. S., 31, 53 L. Ed., 75,* a decision which has been repeatedly quoted by the United States Supreme Court and by the Supreme Court of the various States.

> *Hibben v. Smith, 191 U. S., 325, 48 L. Ed., 195.*
>
> *French v. Barber Asp. Co., 181 U. S., 329, 45 L. Ed., 879.*
>
> *Carroll v. Greenwich Ins. Co., 199 U. S., 401, 50 L. Ed., 246.*
>
> *Hurtado v. California, 110 U. S., 535, 28 L. Ed., 232.*

In *Tyler v. Judges, 179 U. S., 410, 45 L. Ed., 252,* it was held:

> "The constitutionality of a statute cannot be assailed unless the party questioning it has been, or is likely to be deprived of his property without due process of law. A court cannot assume to decide the general question as to whether the statute, as to some other person, amounts to a deprivation of property."

The mere contention of plaintiffs that they are deprived of their property without due process of law, without conclusive evidence of the fact that they are so deprived, amounts to nothing. And, as has been al-

ready pointed out, the plaintiffs, nor others similarly situated, have no property rights in shrimp of which they may be deprived without due process or otherwise, until they have acquired a property right in the shrimp by full compliance with the Louisiana statute.

> "A party has no interest to assert that a statute is unconstitutional because it might be construed so as to cause it to violate the Constitution. His right is limited solely to the inquiry whether in the case which he presents the effect of applying the statute is to deprive him of his constitutional right."
>
> *Castillo v. McConnico, 168 U. S., 680, 42 L. Ed., 622.*
>
> *Strauss v. Foxworth, 231 U. S., 162, 58 L. Ed., 168.*
>
> *N. O. v. N. O. Waterworks Co., 142 U. S., 88, 35 L. Ed., 943.*

In *McCready v. Virginia, 94 U. S., 391, 24 Law Ed., 248,* it was said:

> "A right of fishing is a property right, and not a mere privilege or immunity of citizenship.
>
> "The citizens of one state are not invested by the U. S. Constitution with any interest in the common property of the citizens of another State.
>
> "A State can grant to its own citizens the exclusive use of lands covered by water, for raising oysters, and may prohibit under a penalty, their use for such purpose, by citizens of other states."

It has become a settled principle of public law that power resides in the several States to regulate and control the right of fishing in the public waters within their respective jurisdictions.

McCready v. Virginia, 94 U. S., 391, 24 Law Ed., 248.

Smith v. Maryland, 18 How., 71, 15 Law Ed., 269.

Smith v. Levinus, 8 N. Y., 472, 3 Kent Com., 415.

In *Smith v. Maryland, 18 How., 71, 15 Law Ed., 269*, it was held:

> "Whatever soil below high water mark is the subject of exclusive ownership, belongs to the state on whose borders, or within whose territory, it lies.
>
> "But this soil is held by the state subject to and in trust for the enjoyment of the public right of fishery. The state may forbid all such acts as would render the public right less valuable, or destroy it."

The specific rule was laid down in *New Orleans v. New Orleans Waterworks Co., 142 U. S., 79, 35 L. Ed., 943*, which is but the affirmance of a well-settled principle of law, as follows:

> "In order to constitute a violation of a constitutional provision against depriving a person of his own property without due process of law it should appear that such person has a property right in the particular thing of which he is alleged to have been deprived."

The foregoing case was a Louisiana case, representing one of a series heard and determined by the Supreme Court of Louisiana, and ultimately finding their way for final decision to the Supreme Court of the United States. So that, we reiterate that before plaintiffs can complain of being deprived of property without due process of law, they must first establish that they have, and *how* they acquired the property or a property right in the thing of which they claim to have been deprived; but we here point out that plaintiffs do not set forth in their petition wherein they themselves have at any time been deprived of any property in the shrimp or oysters lawfully acquired by them, or how they can be deprived of any property in said shrimp or oysters, if they obtain and acquire same in compliance with the terms of the aforesaid "Shrimp" and "Oyster" laws of Louisiana.

Plaintiffs contend that the said Act 103 of 1926 is violative of Section 2 of the Louisiana Constitution, which provides:

> "That no person shall be deprived of life, liberty or property, except by due process of law."

This is merely a reiteration of the complaint, already discussed, except to add to the contention that the sections of the act complained of, not only violate the Federal Constitution, but are violative of the aforesaid Bill of Rights of the State of Louisiana. Hence, the argument which we have advanced with reference to the contention of the plaintiffs, hereinabove referred to, will answer that which we have just noted.

The plaintiffs contend, also, that the said Act of 1926 violates the provisions of Section 14 of Article XIX of the Constitution of Louisiana for the year 1921, as tending to create a monopoly.

If plaintiffs' contention is right, their remedy is to proceed under the laws of the State enacted pursuant to its present and former Constitutions, which prevent or punish so-called monopolies, or if they believe that the laws of Louisiana are inadequate to avail themselves of Federal statutes which prevent the creation and existence of monopolies, but plaintiffs fail to point out wherein the Act of the Legislature aforesaid creates a monopoly of the shrimp and oyster trade. The statutes accord to all persons and corporations domiciled in Louisiana, or organized under the laws of Louisiana, and comprising residents of the State, to engage in the buying and selling of shrimp and oysters, in the canning and packing thereof, and under specific conditions to ship and transport the same wherever a market for them might be found. Plaintiffs lose sight of the fact that they cannot, under any circumstances, become the absolute owners of the shrimp and oysters; that they cannot divest the title of the State to the shrimp and oysters until they have complied with the provisions of the laws referred to. Whenever they have complied with the provisions of the acts and have removed the hulls from the shrimp and shells of the oysters, they are then at liberty to transport, ship, or otherwise dispose of their property as they may see fit.

The State of Louisiana, in order to upbuild its industries and to conserve its natural resources, as fertilizer, as road building material, etc., prohibits the re-

moval of the hulls of shrimp and shell of the oysters from the State, and requires that these hulls and shells be retained within its jurisdiction, to be converted into valuable fertilizer and as an element of chicken feed and as road building material, etc., for the use and benefit of the inhabitants of the State.

The State has absolute power and authority, through its Legislature, to enact such laws, which in no sense violates the interstate commerce clause of the Federal Constitution or any other part of the Fourteenth Amendment to the Federal Constitution, nor does it violate the Bill of Rights nor any Article of the Constitution of the State of Louisiana.

Possibly the clearest case and the one most in point in so far as it applies to the subject now under discussion, is that of *State v. Harrub, 15 L. R. A., 765; 95 Ala., 176 10 So., 752*, which case has been cited with approval by Federal and State Courts throughout the Union. This decision, so far as a careful research on our part has been able to reveal, has never been amended, modified or overruled, and stands today as fixed jurisprudence, serving as a guide to the Courts of the many States of the Union. In that case it was said:

> "If the State has the power to prohibit the exportation of its oysters absolutely, *a fortiori*, it may limit the shipment of such oysters to such as may have been shelled. If the Legislature sees proper as a means to prevent the exhaustion of its oyster-beds, to grant to the takers, who can only be resident citizens of the state, or their grantees within the state, such a qualified property right in

the oyster as will permit its exportation only after it is shelled, where is the authority to judicially control this discretion, or what principle of the Interstate Commerce Law is violated by such an enactment? The oyster is the absolute property of the state. It certainly has the power to prevent its becoming an article of interstate commerce. Until it becomes an article of interstate commerce Congress has no authority or control in the premises. The state, by the statute itself, expressly retains the title to the oyster, and prohibits its shipment beyond the state until shelled. Only after it is shelled does the state relinquish its title, and the grantee, previously having but a qualified interest, becomes the absolute owner, and the oyster may then become an article of interstate commerce. When shelled, and the state has parted with its property rights, the state no longer interferes with the article. The owner ships it wherever he pleases and by whatsoever transportation he prefers. * * * "

"The error in the argument of the defendants' counsel is in assuming that the oyster in the shell was an article of commerce, when in fact the taker, who could only be a citizen of the state, as we have seen, had but a qualified interest in the oyster, which he could dispose of only in the state. It would be unsound reasoning to hold that the state could prohibit absolutely the taking of its oysters, or confine the use of them exclusively to its own citizens, and yet could not prevent

the taker from shipping them beyond the limits of the State. If the statute had undertaken to invest the taker or his grantee with a full and absolute property right and title to the oyster in the shell, so as to invest him with the power to convert it into an article of commerce, and had then undertaken to prevent its shipment, or burden its shipment with a tax, a different question might arise. That is not the case here. The state carefully guards against this condition, and it is only after being shelled can it be said that the oyster has become an article of interstate commerce."

It will be noted that the statute then under consideration by the Supreme Court of Alabama had declared that oysters within its waters should be the property of the State. That it granted to its own residents, or to their grantees within the State, the privilege of using, utilizing, or otherwise disposing of its oysters under certain prescribed conditions; that these conditions had to be fufilled in their entirety before the title of the State could be considered as divested. So that, it was impossible for any person to acquire complete ownership of the oysters of the State until full compliance with the statute had been made.

The statute further prohibited the shipping from the State of oysters in the shell, but did accord to its inhabitants and to their grantees the right to shell the oysters in the State and thereafter to ship the shelled oysters wheresoever the owner, whose title had then become complete, may desire.

As pointed out by the Court, the error in the contention there made that the statute under consideration was violative of the Interstate Commerce Clause and was a deprivation of the property of the complainants without due process of law, originated from the fact that in that case, as in the present one, it was erroneously argued and contended that the oyster in the shell was an article of commerce, when, as a matter of fact, under the statute of Alabama, as under the statute of Louisiana, the oyster could not become an article of commerce until the shell had been removed from the oyster within the limits of the State of Alabama and the shell there retained, to be converted into a valuable article of commerce.

The striking similarity between the Alabama case and that of the present cases before this Honorable Court need not be urged.

The Louisiana statutes accord to its citizens, its corporations, its residents, or to corporations operating under the laws of Louisiana, or to the grantees of any of these within the State, the privilege to acquire its salt water shrimp and oysters upon certain fixed terms and conditions, all of which we have already gone over.

The essential and sacramental conditions under which the State of Louisiana agrees to part with title to its shrimp and oysters are, that the hulls of these shrimp shall be retained in the State, and that the shells of the oysters shall be likewise retained in the State, there to be used in the manufacture of fertilizer, and as an element of chicken feed, and as road building material, railroad ballast, etc., respectively,

for the benefit of the inhabitants of the State. When these sacramental requirements are complied with, then, and not until then, do the shrimp and oysters become articles of commerce. Hence, it is legally imposisble for the statutes to be construed as an interference with interstate commerce; since nothing can become a subject of commerce until the ownership passes, as in the instant case. Louisiana owns its shrimp and oysters; it retains title to them until certain requirements are met, and until these requirements are met, no one can claim title to or ownership of the salt water shrimp and oysters of the State, and until one does acquire such title and ownership, he cannot complain that he is being deprived of property without due process of law, or that his property is burdened to the extent that he is prevented from utilizing it as an article of interstate commerce.

It is apparent, then, that there is no discrimination between the plaintiffs and any other Louisiana corporation, or between the plaintiffs and any citizen or resident of the State of Louisiana. They are all placed upon an equal footing; none of whom can remove the shrimp from the State without first removing the hulls, nor the oysters without first removing the shells.

This principle is enunciated with great clarity in *Turner v. Maryland, 107 U. S., 38; 27 Law Ed., 370.* In the body of that decision the Supreme Court said:

> "Whatever discrimination in this respect of purchases for exportation, before referred to, results from any provisions of the law, is a discrimination which, we think, the State has a right to make, resulting, as it

does, wholly from regulations which affect the article before it has become an article of commerce, and which attach to it as and when it is grown, and before it is packed or sold. The tobacco is grown with these regulations in force, and the State has a right to say what shall be lawful merchantable tobacco. This is really all that has been done in regard to the tobacco in question."

In the above case the Court had under consideration a statute of the State of Maryland, which prohibited the exportation of tobacco from the State, except under certain specified conditions and requirements. These conditions attached to the tobacco when it was grown and before it was packed and sold; hence, attaching to the tobacco before it became an article of commerce. So, it is with the shrimp and oyster industries in Louisiana. The conditions imposed by "Shrimp" and "Oyster" Acts in Louisiana, attach to the shimp and oysters before they can be packed or sold, and, therefore, before they can become articles of commerce. The requirement that these shrimp and oysters shall be first hulled and shelled before being shipped from the State does not constitute a burden upon interstate commerce, since the shrimp and oysters do not become articles of commerce until the title of the State of Louisiana to the shrimp and oysters has become completely divested, which can only be done through strict compliance with the statutes.

It is a well settled principle of law, so thoroughly determined now as to be irrefutable, that a State can regulate within its territory the liberty of fishing in

the navigable waters of the State, in the absence of any regulation by the United States.

This doctrine has been upheld in hundreds of cases, but notably in *Manchester v. Massachusetts, 139 U. S., 240, 35 Law Ed., 159.*

It will be noted that plaintiffs do not contend that the statutes of the State of Louisiana, relating to shrimp and oysters, were not enacted in pursuance of full authority by the State, nor is it contended that such acts are violative of the laws or regulations of the United States, relating to fish and fisheries. Therefore, we may place out of the argument entirely the proposition of whether or not the State of Louisiana had a right to adopt the statutes in question.

The policy of the Louisiana statutes is to render public rights and public commodities more valuable. Further, it was to stimulate and upbuild industries of the State of Louisiana, that of manufacturing into a valuable fertilizer and component of chicken feed as a by-product, shrimp hulls, and to use and utilize the oyster shells as a valuable road building material, etc., both natural resources of the State.

The laws were further enacted for the purpose of inviting canning, drying and packing factories to the State to provide for handling of shrimp, and for the purpose of establishing plants for utilization of the oyster shells, thereby increasing and enhancing the State's wealth and commerce.

All of these purposes are entirely legitimate, and laws to carry them into effect have been adopted by

practically every State of the Union, and these statutes, because of the very reasons which permitted their enactment, have uniformly been upheld by the High State Courts and the Supreme Court of the United States.

In the case of *Smith v. Maryland*, cited herein, and quoted from, the Court said:

> "That the State may forbid all such acts as would render the public right less valuable."

And in consideration of that right, it was pointed out in *State v. Harrub*, already referred to, that the unrestricted shipping from the State of oysters in the shell would defeat the utilization of the shells in the propagation of oysters, and thereby render the public right less valuable.

> Citing *Section 5, Vol. 2, U. S. Commissioner of Fish and Fisheries, page 564.*

So, in the present case, would the unrestricted shipping of unshelled shrimp and unshelled oysters from the State of Louisiana defeat the utilization of the hulls and shells for valuable commercial purposes—that of manufacturing the same into fertilizer and chicken feed, and road building material, ballast, etc., and thereby render the public right less valuable.

We anticipate that the plaintiffs will attempt to place some reliance on the case of *Elmer v. Wallace, 275 Fed. Rep., 86.* In that case the Court had under consideration a statute of the State of Alabama, which imposed a tax of 5 cents per barrel upon salt water

shrimp taken from the waters of the State for canning, drying or shipping within the State.

Section 8 of that Act, while making it unlawful to transport such shrimp *by water* beyond the boundary of the State, unless the usual price paid therefor at the place to which they are transported is higher than paid in the State, also imposed a tax of 20 cents per barrel on shrimp so transported outside; and Section 12 of the Act prohibited any person who had not for more than a year been a *bona fide* resident of the State from catching shrimp in its waters for shipment out of the State *by water*.

The Court held that the Sections 8 and 12 of the statute were manifestly intended to discriminate against canners and packers in other States, by imposing hindrances and burdens on the interstate shipment of fresh shrimp, and the aforesaid Sections 8 and 12 were found to be in violation of the commerce clause of the Constitution.

The discrimination in the Alabama statute is manifest, as the tax there imposed was not levied as a condition precedent to divesting title to the State of the shrimp, but was a direct burden upon interstate commerce and a glaring discrimination between residents of the State of Alabama and residents of other States; so that, the ruling of the Court there was clearly correct.

The Louisiana statutes, however, impose no burden upon shrimp and oysters caught and dredged from its waters after the shrimp and oysters have become articles of commerce. It places no restriction upon

the shipment of the shrimp and oysters, either within the State or out of the State, after the State's title to the shrimp and oysters has become completely divested. It simply stipulates that before shrimp and oysters caught and tonged in Louisiana waters can become articles of commerce, and before the title of the State to the shrimp and oysters may be considered as completely divested, that there shall be removed from the shrimp the hulls thereof and from the oysters the shells thereof, in order that these hulls and shells may be used and utilized as a valuable article of commerce, by converting them into fertilizer and chicken feed, and road-building material and ballast, etc., for the use and benefit of the inhabitants of the State.

Of course, we understand that plaintiffs contend that Section 13 of the Shrimp Law was designed to permit both the unhulled shrimp, as well as the hulls, to be shipped from the State of Louisiana; and, hence, the restriction placed upon the shipment of shrimp, unhulled, from the State constitutes an interference with interstate commerce, in view of the fact that the statute permitted the hulls in a manufactured state to be shipped beyond the border of Louisiana. In this, however, plaintiffs have clearly misunderstood and misinterpreted the language of Section 13 of the aforesaid act.

The aforesaid Section 13 reads, in part, as follows:

> "It shall be unlawful to export from the State of Louisiana any raw shells or hulls and heads of salt water shrimp as they are required to be manufactured into fertilizer

or used for an element in chicken feed. When the shrimp hulls or shells and heads shall have been conserved for the purposes herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof. Any person, firm or corporation violating the provisions of this section shall be liable to the penalties hereinafter imposed."

From the above quotation from Section 13 of the Act, it is clear that the shipment of the raw hulls of the shrimp from the State is prohibited, since these hulls are required to be retained within the limits of the State, to be manufactured into fertilizer, or to be utilized as an element of chicken feed, the idea being to conserve this important natural resource for the benefit of the inhabitants of the State; but the statute does not prohibit the shipment from the State of the unshelled shrimp, nor does it prohibit the shipment from the State of the hulls after they have been manufactured into fertilizer or chicken feed.

It is, therefore, clear that the purpose of the statute is not only entirely legitimate, but carries out the authority vested in the State, to conserve for the benefit of its inhabitants and its citizens its natural resources, to increase its industries, and to render more valuable and profitable one of the natural resources of the State.

Counsel for plaintiffs may also attempt to derive some consolation from the case of *State v. Ferrandau*, reported in the *130 La., 1035, 58 So., 870*, wherein the

Supreme Court of the State of Louisiana held that the provisions contained in Section 1 of Act 189 of the General Assembly of Louisiana of the year 1910, to the effect that "no person, firm or corporation shall ship oysters out of this State for canning or packing out of the State," was a discriminatory regulation of interstate commerce.

There is not the remotest similarity between the provisions of Section 1 of Act 189 of 1910 and any of the provisions contained in Act 103 of 1926, the "Shrimp" Act, nor in Act 258, Louisiana Legislature 1926, known as the "Oyster" Act.

When the Legislature of Louisiana, by the Act of 1910, attempted to prohibit the shipment from the State of oysters for canning or packing outside of the State, it was clearly a discriminatory regulation of interstate commerce, particularly since, under other provisions of the Act, anyone engaged in the business could have shipped oysters in unlimited quantities for any other purposes and could have canned or packed them in unlimited quantities within the State, while only the person who shipped them outside of the State, to be packed or canned without the State, was considered a violator of the law. Such a flagrant discrimination, of course, could not be upheld by any Court.

Plaintiffs contend that the enforcement of said Act, and especially Sections 13 and 19 thereof, if valid, would subject plaintiffs to prosecution and to criminal penalties and punishment unusual in character, and, besides, subject plaintiffs' property to possible confiscation, thereby inflicting an irreparable injury upon the plaintiffs.

Our answer to that is, that if plaintiffs comply with the provisions of the statute, they could not possibly be subjected to criminal prosecution and penalties. It is only those who violate the provisions of the Act who are subjected to its punishments. The penalties there imposed are not more severe than conditions warrant. In order for plaintiffs to escape these penalties, it is only necessary that they track the strict letter of the law, in which event they will find themselves precisely in the same situation as any other resident, citizen, or corporation of Louisiana, with no discriminatory clauses hampering their operations, and with nothing to prevent them from placing their property after its due and lawful acquisition into commerce.

It will be observed by Section 19 of the Act that

> "any person, firm or corporation found guilty by the Court of exporting salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1000.00), or to imprisonment of not less than six months (6) nor more than one (1) year and shall be liable to both fine and imprisonment in the discretion of the Court."

So that, the measurement of punishment lies between a minimum and maximum fixed by the statute, and the imposition of which rests solely with the Court.

In *State v. Carson, 50 Atl., 780*, a statute providing for a penalty of not more than $1000.00 or imprisonment not exceeding five years, or both, for the violation of any statute or ordinance regulating the cultivation of oysters, was held not to be within the inhibition of the constitutional prohibition against excessive fines or cruel and unusual punishment, as the statute left the matter of the severity of the punishment to the discretion of the Trial Court.

In Re Stone, 41 Atl., 658, a penalty of $20.00 for each partridge unlawfully possessed was held not to be within the inhibition of the Constitution against excessive fines and cruel punishment.

In *McMahon v. State, 7 Neb., 722, 97 N. W., 1035*, it was held

> "that a fine of $5.00, for each prairie chicken found in possession of one during the closed season, was not excessive."

In *State v. Lubbe, 45 Atl., 520*, an act providing that "it was unlawful to possess for any purpose, any lobster less than 10¾ inches in length, under the penalty of $5.00 for each lobster so possessed, was not unconstitutional and void, as being excessive, cruel and unusual punishment.

In Re Schwartz, 119 La., 290, 44 So., 20, it was said:

> "The legality of game laws has been decreed in a number of jurisdictions, including the Supreme Court of the United States. Although for the protection of non-game birds

the Legislature has adopted drastic measures, the statute does not exceed constitutional limitation."

Of course, there is no legal distinction between statutes regulating the possession of game and those relating to fish and fisheries.

We here point out, however, that the minimum fine permitted to be imposed under the Shrimp Act is $500.00, and upon conviction and sentence, even of the minimum penalty, the plaintiffs, if found guilty, would have a right of appeal to the Supreme Court of the State, and that tribunal, if it determined that plaintiffs were illegally and unduly convicted, would protect them to the full measure to which they are entitled under the Constitution.

Therefore, since it cannot be argued that plaintiffs would be deprived of due process of law, no constitutional right of theirs could possibly be violated under the circumstances.

Plaintiffs also contend that Section 4 of Act 103 of 1926 is violative of the Fourteenth Amendment of the Federal Constitution, as being a discrimination between residents and non-residents engaged in the same class of business.

Section 4, referred to, reads as follows:

"That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of

this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; and any person, firm or corporation so violating the provisions of this section shall be liable to the penalties hereinafter provided."

The plaintiffs, Foster-Fountain Co., Inc., in their bill of complaint, aver that they are a corporation organized under the laws of the State of Louisiana, with a domicile in the City of New Orleans, in said State, which location, if correct, places them in the same class and category as any other resident, firm or association composed of residents of the State, or of any corporation domiciled in or organized under the laws of this State. Plaintiffs, therefore, being legal residents of the State of Louisiana, have no cause to complain of what they may conceive to be a discrimination against non-residents. That only such non-residents

themselves, if they feel aggrieved by the statute in question, have a standing in Court to attack the statute on the ground of discrimination.

As to the plaintiffs, the Sea Food Company claiming to be a corporation organized under the laws of the State of Mississippi, domiciled at Biloxi, Harrison County, Mississippi, they do not allege that they have qualified to do business in the State of Louisiana, by complying with the General Corporation Law (Act 267 of 1914, p. 521), by filing in the office of the Secretary of State of Louisiana a certified copy of its certificate of incorporation, and its Articles of Incorporation, and obtaining from the Secretary of State a certificate authorizing it to exercise the same powers, rights and privileges as are accorded to similar domestic corporations. Hence, this Court is without authority to judge or determine whether or not the plaintiffs, the Sea Food Company, have a proper standing in Court to attack the constitutionality of the statute in question.

But even if the latter corporation has authority to attack the constitutionality of the aforesaid "Oyster" and "Shrimp" Laws of Louisiana, our answer is that the State of Louisiana has a right in the conservation of its natural resources to discriminate between its residents and non-residents, as the authorities already quoted clearly demonstrate.

As we have already pointed out, the citizens of one State are not vested by the Constitution of the United States with any interest in the common property of the citizens of another State. A State can grant

to its own citizens the exclusive use of land covered by water, and may prohibit, under a penalty, their use for such purpose by citizens of other States.

In *Barbier v. Connelly, 113 U. S., 31, 28 L. Ed., 923*, it was said:

> "Class legislation, discriminating against some and favoring others, is prohibitive, but legislation, which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

We here point out that as to the first-named plaintiff, it is placed in the same class and category as any other resident of the State of Louisiana; and as to the second-named plaintiff, it is placed in the same class and category as any other non-resident of the State.

The leading case on this point is *McCready v. Virginia*, reported in *94 U. S., 391, 24 Law Ed., 248.*

To the same effect are *Smith v. Maryland, 18 How., 71, 15 Law Ed., 269; Smith v. Levinus, 8 N. Y., 472.*

In the *McCready* case, the opening paragraph of the opinion states:

> "The precise question to be determined in this case is, whether the State of Virginia can prohibit the citizens of other states from planting oysters in Ware River, a stream in that State where the tide ebbs and flows, when its own citizens have that privilege."

And it was there held that a State may grant to its own citizens the exclusive use of lands covered by water, for raising oysters, and may prohibit, under a penalty, their use for such purpose, by citizens of other States, the conclusion being based upon the very correct reasoning that the citizens of one State are not invested by this clause of the United States Constitution with any interest in the common property of the citizens of another State.

Of course, it cannot be disputed that the shrimp and oysters in Louisiana waters are the property of the State of Louisiana. In fact, this admission is contained in the bills of complaint of the plaintiffs, for which reason it is within the province of the State to conserve its natural resources for the benefit of its residents and inhabitants, and to exclude entirely, if it sees fit, any non-resident from participating in any benefits to be derived or advantages to be obtained from any of the State's resources.

Plaintiffs further contend that Section 13 of Act 103 of 1926 is unconstitutional, in that it attempts to compel plaintiffs to pack shrimp in Louisiana at a loss, and as a condition precedent to their making and filling contracts for such packed shrimp to be placed in interstate commerce.

Our answer to that is, that there is no law compelling plaintiffs to engage in the business of canning and packing shrimp in Louisiana, but that if they elect to avail themselves of the privileges which the laws of Louisiana liberally bestow upon them, it is necessary that they comply with the Louisiana statutes; that the fact that plaintiffs have seen fit to make con-

tracts for the delivery of shrimp which they are unable to fulfill without violating the laws of Louisiana, is no reason why the statute of Louisiana, enacted for the purpose of conserving an important natural resource, should be declared unconstitutional, discriminatory or unjust.

Section 13 of the Act in question declares all salt water shrimp and the shells or hulls and heads thereof to be the property of the State of Louisiana; it further declares the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer, or as a component of chicken feed; and it makes it unlawful to hereafter export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been first removed.

We are taking the liberty of quoting the aforesaid Section 13, in full:

> Section 13: "All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.
>
> In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State

of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State, or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limit of the State, without restriction or reservation.

It shall be the duty of all licensees operating under the Department of Conservation in the shrimp industry in this State to conserve for fertilizer purposes all shells or hulls and heads of salt water shrimp and to report monthly, on blanks to be furnished by the Department of Conservation, the quantity thereof on hand, to the Department of Conservation. It shall be unlawful to export from the State of Louisiana any raw shells or hulls and heads of salt water shrimp as they are

required to be manufactured into fertilizer or used for an element in chicken feed. When the shrimp hulls or shells and heads shall have been conserved for the purposes herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possesor thereof. Any person, firm or corporation violating the provisions of this section shall be liable to the penalties hereinafter imposed."

The only condition precedent to the utilization of the shrimp which the plaintiffs may acquire, and of which plaintiffs complain, is that they are required to first remove from the shrimp purchased by them the heads and shells or hulls of the shrimp, which the statute requires shall remain within the State, to be converted into fertilizer, or used as a component part of chicken feed. If the State has the unlimited authority to prohibit the shipment beyond its limits entirely of shrimp, which right it unquestionably has, for a stronger reason is the State vested with authority to permit the shipment from beyond its limits of shrimp under certain restrictions, particularly if the restrictions are reasonable and not violative of any constitutional right or authority.

As has already been pointed out, the doctrine laid down in the case of *State v. Harrub* is thoroughly applicable to the instant case, since the statute of Alabama, which prohibited the shipment of oysters from the State of Alabama in the shell, was declared by the Supreme Court of that State to be valid and constitu-

tional, and this decision has remained as authority to this day, having been quoted and approvingly referred to by other Supreme Courts of other States of the Union.

Plaintiffs contend that the said Act violates the Fourteenth Amendment, in that plaintiffs are forbidden from shipping out of Louisiana with hulls and shells on any shrimp which it may acquire lawfully within the limits of the State of Louisiana, thus constituting an interference with interstate commerce and depriving the petitioners of due process of law and of equal protection of the laws, all in violation of the aforesaid Fourteenth Amendment.

While this contention is only a reiteration of those already noted, we answer it by quoting from *State v. Harrub, 95 Ala., 187, 10 So., 752,* as follows:

> "If the State has the power to prohibit the exportation of its oysters absolutely, *a fortiori*, it may limit the shipment of such oysters to such as may have been shelled. If the Legislature sees proper, as a means to prevent the exhaustion of its oyster-beds, to grant to the takers, who can only be resident citizens of the State, or their grantees within the State, such a qualified property right in the oyster as will permit its exportation only after it is shelled, where is the authority to judicially control this discretion, or what principle of the interstate commerce law is violated by such an enactment? The oyster is the absolute property of the State. The

State certainly has the power to prevent its becoming an article of interstate commerce. Congress has no authority or control in the premises. The State, by the statute itself, expressly retains the title to the oysters, and prohibits their shipment beyond the State until shelled. Only after it is shelled does the State reliquish its title, and the grantee previously having a qualified interest, becomes the absolute owner, and the oyster may then become an article of interstate commerce. When shelled, and the State has parted with its property rights, the State no longer interferes with the article. The owner ships it wherever he pleases, and by whatsoever transportation he prefers."

Plaintiffs further contend that the aforesaid Section 13 of said Act 103 of 1926 violates the commerce clause of the United States Constitution, in that

(a) said section imposes a direct burden upon interstate commerce;

(b) because said Act was not passed to conserve the natural resources of Louisiana;

(c) because said Act is not a proper exercise of the police power.

As to the contention (a), that the aforesaid Section imposes a direct burden upon interstate commerce, we believe we have already sufficiently pointed out that this contention of the plaintiffs in unfounded in fact and in law. Since the shrimp and oysters can-

not become articles of commerce until the State's title thereto has become divested, there is no opportunity to argue that the statutes impose a burden upon interstate commerce, unless it be shown that such burden is attempted to be levied after the title of the State to the shrimp and oysters has been divested, and after the shrimp and oysters have become articles of commerce.

As to the contention (b) that the Act was not passed to conserve the natural resources of Louisiana, we quote the title of the Act, as follows:

> "AN ACT to declare all shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana; to provide penalties for the violations of the provisions of this Act, and to repeal all laws in conflict herewith."

The title of what is known as the "Oyster Law" of Louisiana reads as follows:

> "AN ACT to declare all oysters and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the oyster industry of the State of Louisiana, to provide penalties for violations of the provisions of this Act and to repeal all laws in conflict herewith."

It is, therefore, clear from the titles of both Acts, that their purpose is to conserve important natural resources of the State, to-wit, Shrimp and Oysters.

The Oyster and Shrimp Laws were adopted by the Legislature in pursuance of express authority delegated to it by the Constitution of Louisiana, Article VI, Section 1, reading as follows:

> "The natural resources of the State shall be protected, conserved and replenished; and for that purpose shall be placed under a Department of Conservation, which is hereby created and established. The Department of Conservation shall be directed and controlled by a Commissioner of Conservation to be appointed as elsewhere provided in this Constitution, who shall have and exercise such authority and power as may be prescribed by law. *The Legislature shall enact all laws necessary to protect, conserve and replenish the natural resources of the State, and to prohibit and prevent the waste or any wasteful use thereof.*"

Therefore, not only do the Acts in question provide for the conservation of shrimp and oysters, but these Acts have been passed under specific authority of the Constitution, which makes it mandatory upon the Legislature to enact all laws necessary to protect, conserve and replenish the natural resources of the State, and, further, to prevent *any wasteful use* of such natural resources.

The sale of shrimp in the hulls and sale of oysters in the shell, and the shipment of shrimp from the State in the hulls and oysters in the shell unquestionably constitute a wasteful *use* of these important natural resources. And with the idea of retaining, for the benefit and use of the State, the hulls and heads of shrimp and shells of the oysters, and requiring that they be retained within the State, to be utilized as fertilizer and as a component part of chicken feed, and as road-building material, ballast, etc., respectively, the Legislature adopted these Acts, thus endeavoring to prevent a wasteful use of shrimp hulls and oyster shells, as well as the shrimp and oysters themselves.

As to the third contention (c) that the adoption of the aforesaid Act 103 of 1926 and the regulations therein contained is not a proper exercise of the police power, the authorities are so numerous to the effect that statutes of that character may be adopted and enforced under the police power of a sovereign State, that it would be useless to attempt to cite them all.

It has been repeatedly held that wild animals within the borders of the State, or, in fact, any of its natural resources, are, so far as being capable of ownership, owned by the State in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power, the State may regulate and control the taking, subsequent use, and property rights that may be acquired therein.

The following decisions fully substantiate the doctrine just hereinabove set out:

Geer v. Conn., 161 U. S., 519, 528, 40 L. Ed., 793.

Silz v. Hesterberg, 211 U. S., 31, 53 L. Ed., 75.

Carey v. So. Dakota, 250 U. S., 118, 63 L. Ed., 886.

Pattsone v. Pennsylvania, 232 U. S., 139, 58 L. Ed., 539.

State v. Rodman, 59 N. W., 1098.

In the case of *Lacoste v. Conservation Department, 263 U. S., 549, 68 L. Ed., 437*, the United States Supreme Court said:

> "The legislation is a valid exertion of the police power of the state to preserve and protect wild life for the common benefit. It is within the power of the state to impose the exaction, as a condition precedent to the divestiture of its title and to the acquisition of private ownership."

The contention is urged that the aforesaid Section 13 further violates the Fourteenth Amendment, and Section 14 of Article XIX of the Constitution of Louisiana, as well as the commerce clause of the United States Constitution, because, (a) it imposes a direct burden upon interstate commerce; (b) creates a monopoly in the manufacture and sale of shrimp; (c) places such business in the hands of a small number of corporations engaged in said business in Louisiana; and (d) that said Act was intended to, and will have the effect of, reducing the price of raw shrimp and un-

shelled oysters and increasing the price in interstate commerce of the finished product.

We pass over the first contention to the effect that it imposes a direct burden upon interstate commerce, for the reason that it has been fully answered hereinabove.

To the contention that the Act creates a monopoly in the manufacture and sale of shrimp and oysters, we answer that the Acts contain nothing which would substantiate such a theory. The people, citizens, residents and corporations of the State have unlimited right to engage in the shrimp and oyster industry in Louisiana, but are merely required by the statutes in question to comply with certain restrictions and regulations which the Acts contain, and which restrictions and regulations are required to be strictly observed in order to divest the State of its ownership in its shrimp and oysters and to permit them to become articles of commerce. Any number of persons who may care to, have unhampered and unrestricted opportunity to engage in the shrimp and oyster business in Louisiana, subject, of course, to the regulations which Louisiana has imposed upon that business.

In answer to the contention (c) that the Acts place the shrimp and oyster business in the hands of a small number of corporations engaged in said business in Louisiana, it may be said, as in answer to contention (b), that if there are only a small number of corporations engaged in the shrimp and oyster business in Louisiana, it is not because the "Shrimp" and "Oyster" Acts prohibit persons from engaging in said business, the intention of the Acts was to stimulate, upbuild, in-

crease and develop the shrimp and oyster industries in Louisiana, and if there are only a small number of corporations engaged in that business, it is not because the statutes are responsible therefor.

To the contention (d) that the "Shrimp Law" was intended to, and will have the effect of reducing the price of raw shrimp and increasing in price in interstate commerce the finished product, this contention is merely one of fact and must be substantiated by positive proof on the part of plaintiffs, and if they have so established these facts, we still contend that it can have no bearing upon the legality or the constitutionality of the Act under consideration.

Plaintiffs contend that Section 19 of the aforesaid Act 103 of 1926 was intended to have the effect of burdening interstate commerce, and to create a monopoly. The imposition of the penalties provided by Section 19 of this Act, for the seizure of vessels, their tackle and apparatus, used in the illegal taking of salt water shrimp from the waters of this State, can in no sense be construed as imposing a burden upon interstate commerce, much less can the provisions of that Section be construed as creating a monopoly in favor of Louisianians engaged in the shrimp industry.

In *Smith v. Maryland, 18 How., 71, 15 Law Ed., 269,* the Court held:

> "It is within the legislative power of the state to interrupt the voyage and inflict the forfeiture of a vessel enrolled and licensed under the laws of the United States, for a disobedience, by those on board, of such law."

Clearly, if the statute failed to provide punishments and penalties for those who are guilty of violating it, the statute would be impotent and useless.

Anyone may engage in the shrimp industry, under the provisions of the aforesaid Act, and if he is observant of the conditions and stipulations of the statute, there is not the remotest likelihood of punishment being inflicted upon him. But if he violates and transgresses the law, certainly he is amenable to such punishment as the statute provides. The infliction of these penalties and punishments can in no sense be construed as an interference with interstate commerce or as placing a burden thereon, nor can it be considered taking of property without due process of law, or as a denial of equal protection of the laws.

Freund, on Police Power, p. 561, Sec. 528, says:

> "Game unlawfully killed may de destroyed summarily since no property in it can be acquired while the law prohibits its taking. In this case there is no forfeiture since there is no property right."

In the *Lacoste* case, already referred to, the Supreme Court of the United States, at page 548, said, in part:

> "It is alleged that the defendant in error is about to seize and confiscate all shipments of skins and hides to be made by plaintiff in error, and that such seizure would be illegal and would constitute a taking of property without due process of law and would inflict

upon them irreparable injury and damage, leaving them without remedy therefor."

"These allegations were, for the purpose of the trial, taken as true."

The Supreme Court in that case upheld the constitutionality of the statute then under consideration, which provided for the seizure and confiscation of certain furs and pelts.

In Re Schwartz v. State, 119 La., 295, 44 So., 20, the Supreme Court of Louisiana said:

"To the argument that the act deprives persons of their liberty or authorizes seizures without due process of law, and that in consequence it is violative of Section 8 of Article I of the Constitution of the United States, it is sufficient answer to state that the trend of the decisions do not sustain the contention of the defendant."

In *State v. Jackson, 152 La., 655, 94 So., 150,* the contention is made that the Hood Act was unconstitutional, in that it deprived a person of his property without due process of law, and authorized the destruction of his property and was otherwise unconstitutional and violative of Section 1 of the Fourteenth Amendment to the Constitution of the United States. In that case the constitutionality of the statute was upheld, together with its entire provisions.

In *Samuels v. McCurdy, 267 U. S., 188, 69 L. Ed., 568,* the United States Supreme Court said:

"The seizure and destruction, without compensation, of such liquors (unlawfully

possessed) pursuant to State prohibition laws, does not deprive such possessor of property without due process of law."

In *North American Storage Co. v. Chicago, 211 U. S., 306, 53 L. Ed., 193*, the Court said:

> "Under its police power the State has the right to seize and destroy food which is unwholesome and unfit to use, and in exercising such a power, due process of law, within the meaning of the Fourteenth Amendment, does not require previous notice and opportunity to be heard; the party whose property is destroyed has a right of action after the act which is not affected by the *ex parte* condemnation of the state officers."

In *New Orleans v. Charouleau, 121 La., 890, 46 So., 911*, the Supreme Court of the State upheld an act which provided that incurable cows may be slaughtered under the orders of the State Board of Health, without compensation to the owners thereof.

In *Lawton v. Steele, 152 U. S., 133, 38 L. Ed., 385*, a statute of the State of New York regulating fishing was attacked as unconstitutional. The statute authorized the summary destruction by any person of a net or device being used in violation of the law, and also provided that no action for damages would lie against any person on account of said destruction. The constitutionality of these provisions were sustained under the police power.

To the same effect is *Bittenhau v. Johnson, 92 Wis., 588, 66 N. W., 805, 32 L. R. A., 380,* wherein the case of *Lawton v. Steele* is cited and quoted from.

In *Smith v. Maryland,* cited above, where a statute forfeiting a boat because it made an illegal use of an oyster dredge, was upheld.

The plaintiffs contend that the aforesaid Section 19 of said Act also violates the Fourteenth Amendment of the Federal Constitution, since plaintiffs are denied the right to contract for shrimp with hulls on and to ship them with hulls on in interstate commerce.

The complete answer to this is that plaintiffs have no right to complain that they are prohibited from contracting for the shrimp with hulls on, and to ship the same in interstate commerce, for the reason that the statute provides that these shrimp shall be and continue to remain as the property of the State until the title of the State is completely and fully divested in the manner provided for by the Act, and until such title is divested the shrimp cannot become articles of commerce and cannot be placed in interstate commerce. (Tr. 28, Rec. 768).

The same argument applies fully to the "Oyster Law."

Plaintiffs are presumed to know the law, and since the law prohibits the shipping out of the State of shrimp with the hulls on and unshelled oysters,

plaintiffs are without right to complain if they have contracted to sell shrimp with the hulls on, or to buy oysters with shells on, in defiance of the statutes which prohibit that the shrimp shall be shipped out of the State unless unhulled and the oysters shall likewise be shipped out of the State unshelled.

Plaintiffs contend that they are not permitted to ship shrimp out of the State unhulled, nor to acquire oysters unshelled, and therefore are unable to comply with their contracts or to operate their business at a profit, thus being deprived of their property without due process of law, and thus having their interstate trade burdened and interfered with; that they are thereby denied the equal protection of law through burden or discrimination, all in violation of the Fourteenth Amendment. This contention has already been fully met in the argument already hereinabove outlined.

The plaintiffs contend that Sections 4 and 13 of the Act 103 of 1926 further violate the Fourteenth Amendment and Section 2 of Article I of the bill of rights of Louisiana, in that in the enforcement of the law persons residing in Louisiana are permitted to ship whole shrimp out of the State, by filing a false affidavit to the effect that the shrimp are caught beyond the 3-mile limit, whereas, plaintiffs are not accorded that privilege.

While this is only an argumentative contention predicated upon fact and not law, we assert that the

statute makes no such distinction or discrimination as plaintiffs contend. The statute does not provide for the taking of false affidavits, nor does the statute prohibit the plaintiffs from catching shrimp beyond the three-mile limit of Louisiana waters. Hence, there can be no such violation of the State and Federal Constitutions, as plaintiffs contend.

The affidavits contained in Record No. 768 (Tr. 54 to 108, inc.) to the effect that the Conservation Department of Louisiana has willfully permitted the aforesaid law to be violated, are fully refuted by the affidavits of the defendants in error. Of course, there is no intention or desire on the part of the officials of the State of Louisiana to countenance the violation of the law which they have always striven to enforce, and while it is a harsh allegation on the part of the plaintiffs in error to have declared in their petition that the State of Louisiana was willfully permitting the violation of its Conservation laws, the plaintiffs in error should at least, if the allegations set out by them were true, have produced some semblance of proof thereof.

Plaintiffs contend that they are threatened with arrest, criminal prosecution, and confiscation of their property, and will thus be subjected to irreparable injury, and thereby are entitled to an injunction to prevent their being deprived of their property without due process of law.

This contention has already been fully answered and it is settled by ample authority that the State has a right to adopt statutes providing for seizure and con-

fiscation of property when the same is being illegally used in violation of mandatory provisions of a valid law.

It is finally contended by the plaintiffs that the licenses and taxes imposed by Sections 10, 12, 14, 15 and 16 of the "Shrimp Law" are unconstitutional, and in violation of the commerce clause of the United States Constitution, the Fourteenth Amendment, and Section 3 of the Bill of Rights of Louisiana. Yet, the plaintiffs in their petition judicially pledge themselves to the payment of all of the licenses and taxes which the statute provides for in the event they are permitted to ship shrimp out of Louisiana in an unhulled state. They likewise judicially pledge themselves to the payment of all licenses and taxes which the Louisiana laws require with reference to dealing and handling oysters.

It has been repeatedly upheld by the Courts throughout the Union, as well as the United States Supreme Court, that such taxes and licenses as plaintiffs complain of are permissible, and may be levied and enforced under the inherent police power of the State. The only restriction upon such licenses and taxes is that they shall be uniform as to all classes of persons engaged in the same particular business, and shall not be so excessive as to amount to a confiscation of property or to a denial of the right of a person to engage in the business contemplated by the statute.

We deem it unnecessary to quote authorities in support of this well settled principle, and do not be-

lieve that the plaintiffs are serious in the contention which they make.

The following propositions are now firmly established in the jurisprudence of this country beyond all question:

1st. That the State owns the bed of all tide waters within its jurisdiction;

2d. That the State owns the tide waters and such fish and other natural resources as they may retain;

3d. That this ownership is that of the people of the State as tenants in common, to be kept and utilized for the benefit of the people of the State;

4th. That non-residents of the State have no right to, or interest in, this property.

New Orleans v. United States, 35 U. S., 662; 9 L. Ed., 573.

Martin v. Waddell, 41 U. S., 367; 10 L. Ed., 997.

Smith v. Maryland, 59 U. S., 71; 15 L. Ed., 269.

McCready v. Virginia, 94 U. S., 391; 24 L. Ed., 248.

Manchester v. Mass., 131 U. S., 240; 35 L. Ed., 159.

Geer v. Conn., 161 U. S., 519; 40 L. Ed., 793.

Lacoste v. Dept. of Conservation, 263 U. S., 545, 68 L. Ed., 437.

We respectfully submit that the record justifies the contention of defendants in error that the prayer for injunctive relief should be denied, and that the Acts, the "Oyster Law" and "Shrimp Law" of Louisiana, should be upheld by this Honorable Court as valid legislation and not in contravention of any of the provisions of the Federal Constitution.

Respectfully submitted,

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Attorney General;
PEYTON R. SANDOZ,
Assistant Attorney General;
MICHAEL M. IRWIN,
Asst. to Attorney General.

JOHN DYMOND, JR.,
LEANDER H. PEREZ,
Of Counsel.

APPENDIX.

We believe we have discussed all of the important legal phases involved in the "Shrimp" and "Oyster" Laws, but, as a conclusion to this brief, we beg to submit correspondence received by this office from Judge Louis H. Burns, United States District Judge for the Eastern District of Louisiana, who sat at the trial of these cases. While the correspondence is not part of the record, it is absolutely authentic, and we believe will throw considerable light upon the questions involved. We take the liberty of quoting the entire file, as follows:

Chambers
LOUIS H. BURNS
United States District Judge
New Orleans

January 20, 1928.

"Messrs. Lemle, Watkins and Guice,
for Foster-Fountain Co. et al.
and Messrs. Dymond, Saint and Irwin,
for Haydel et als.

Gentlemen:

In view of the fact that I read the correspondence passing between Judge Foster, Judge Holmes and myself preceding our conclusion to deny a preliminary injunction in the shrimp case, when similar relief was prayed for this morning in the oyster case and counsel for the Louisiana interests were not present, I have concluded to send each side copies of these preliminary discussions, thinking that they may help counsel in pre-

paring for the submission of the matter on appeal.

These do not, of course, belong in the record of the case, and I have instructed the Clerk not to include any of them in the transcript. It will be noticed that Judge Holmes joined with us in our final conclusion, although this was contrary to the opinion he originally held while the matter was under consideration. However, as above stated, these views of the judges may assist counsel.

Yours very truly,

Louis H. Burns."

"IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF THE STATE OF LOUISIANA.

FOSTER-FOUNTAIN PACKING COMPANY, ET AL.,	In Equity
v.	No. 18,897
E. J. HAYDEN, ET AL.	

By appropriate proceedings the plaintiffs are seeking to enjoin the enforcement of a law of the State of Louisiana, passed in 1926, which makes it "unlawful to export from the State of Louisiana any salt water shrimp from which the shell, or hull, and head shall not have been removed."

The act is assailed as unconstitutional and void for two salient reasons, among others:

(1) That it directly and substantially interferes with interstate commerce.

(2) That it arbitrarily and unreasonably discriminates between citizens of the several states similarly situated.

The act is put forward as a conservation measure intended to benefit one of the natural resources of the State, and asserted to be within its police power.

The general principles applicable to the respective contentions have become well settled by frequent application, and may be briefly stated.

The proclaimed purpose of the statute is not conclusive, but the Federal Court will determine for itself from the character of the law, the subject upon which it operates, and the necessary effect of the language employed, whether it is repugnant to the Federal Constitution.

Under the Commerce clause (Art. 1, Sec. 8, Cl. 3) no direct burden upon interstate commerce can be imposed by any state without the assent of Congress, and the silence of Congress upon any subject is equivalent to a declaration that it should be absolutely free.

On the other hand, state laws passed in a *bona fide* exertion of the police power are

not invalid because they interfere indirectly and remotely with interstate commerce. But there must be some real connection between the actual provisions of police measures and their assumed purpose. There must be some reasonable grounds for police interference, such as the advancement of public health, safety, or morals, or as in this case, the conservation of the public natural resourses.

Fish, in their natural state, are public property, and the state may deal with them for the public weal, so long as they do not become the subject of commerce, but if the state permits them to become the subject of private property and an article of intrastate commerce, it cannot hinge the right of exportation upon arbitrary or fantastic conditions, nor, under the 14th amendment, can it arbitrarily discriminate between citizens of the several states by permitting some to ship in interstate and foreign commerce, and denying the right to others similarly situated.

In the light of these principles let us examine the act in question in three aspects:

(1) Historically.

(2) *In haec verba.*

(3) Under contemporaneous administrative construction.

It appears from the allegations and proof that the shrimp is a migratory fish existing at certain seasons of the year in inex-

haustible quantities in Louisiana waters, and that during nearly a hundred years a large fishing industry has been built up whereby several hundred fishermen make their living by catching and selling shrimp, some of which, called the green shrimp industry, are eaten while fresh, and others are manufactured into canned shrimp and sold for food.

Because of unfavorable climatic conditions, only a negligible quantity is canned in the Louisiana parishes where caught, but by far the greater portion is shipped to Biloxi, Mississippi, where exists one of the largest shrimp packing industries in the world, in which millions of dollars have been invested and upon which thousands of people depend for a livelihood.

To meet a similar condition with reference to the oyster industry, the Legislature of the State of Louisiana in 1910, with the palpable purpose of creating oyster canning factories within its own borders, or forcing the Mississippi factories to remove to Louisiana, passed an act prohibiting the shipment of oysters out of the state for the purpose of canning or packing. This act was unqualifiedly condemned by the Supreme Court of Louisiana as an unwarranted interference with interstate commerce, and as an arbitrary discrimination between citizens in similar circumstances.

State v. Ferrandau, 130 Louisiana, 1035, 58 Sou. 870.

In that case the court took occasion to say that, conceding for the purposes of argument the state might prohibit the shipment of oysters beyond her borders, she had not done so, but that any one might ship all he desired, except for canning and packing purposes. The court held this to be a regulation of interstate commerce, saying "for it is to lay an embargo upon the trader who may wish to ship a limited number of oysters to be packed and canned elsewhere, while permitting another to ship an unlimited number, which have been packed and canned within the state, for any other purpose whatever." This decision was cited in Lacoste v. Department of Conservation, 263 U. S. 545; 68 L. Ed. 437.

Secondly, examining the Act of 1926, here involved, in its exact words, we find that, under licenses, it permits shrimp to be taken from the waters of the state; permits them to be sold in the open markets of the state, to be shipped from one point of the state to any other; permits them to be canned and shipped out of the state, declares that the heads and shells are valuable for fertilizer and forbids shipping them out of the state until the heads and shells are removed and converted into fertilizer. All may then be transported anywhere. Nothing is conserved for the benefit of the people of Louisiana. Shrimp may become the subject of private property, an article of intrastate commerce, without condi-

tions, and this article of intrastate commerce may be shipped entirely out of the state in unlimited quantities, provided only the qualified owner will take off the heads and shells and make fertilizer out of them. This is the only qualification of ownership, the only limitation of absolute title, a regulation of the form the shrimp must be converted into before being transported in interstate commerce. As stated in Hannibal Railroad Company v. Hason, 95 U. S. 465, 24 L. Ed. 527, "It is a plain regulation of interstate commerce, a regulation extending to prohibition," and as it does not promote the public health, safety, or morals, or conserve the natural resources of the state, but in its natural and necessary effect is intended only to build up the industries of one state by destroying those of another, it is not within the police power.

Finally, in the third aspect, it appears that contemporaneously with its taking effect, now, and at all times, the State's duly constituted administrative authorities have intentionally and systematically construed the act to apply only to shrimp exported for canning purposes. In operation, the same law, which openly and uniformly condemns the interstate canning industry, favors and fosters the large and lucrative green shrimp industry, falling flatly within the condemnation of Mr. Justice Matthews in Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220, 6 Sup.

Ct. Rep. 1064, namely: "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Under this aspect of the act the language of the Supreme Court of Louisiana in State v. Ferrandau, *supra*, is directly applicable:

"So that the state, having made the oyster a commodity of interstate commerce, assumes to regulate and control such commerce, as those who engage in it may be actuated by one purpose or another; saying to the one shipper, 'As your purpose is that your buyers and consignees, living out of the state, shall sell or consume the oysters which you sell and ship to them, your trade is lawful;' and to the other, 'As your purpose is that your buyers and consignees, or that you, yourself, shall pack or can, out of the state, the oysters shipped by you, your trade is unlawful,' and saying to all, 'The oysters produced in Louisiana, whether in private beds or elsewhere, may be packed and canned, but whilst such packing and canning is lawful if done within the state, their shipment, for the purpose of packing or canning them, out of the state, is unlawful..'"

For these reasons I think the preliminary injunction should be granted.

(Signed) E. R. Holmes,
U. S. District Judge."

COPY COPY

17 November, 1927.

"Hon. Edwin R. Holmes,
U. S. District Judge,
Yazoo City, Miss.

My dear Judge Holmes:

This is my first opportunity to acknowledge your recent letter enclosing a memorandum of your conclusions in the case of Foster-Fountain Packing Co. et als. v. E. J. Hayden, et als. I have been very busy and have just concluded a complete examination of the record and the briefs filed. Considering these and the argument of counsel at the hearing on the application for a preliminary injunction, I have reached the conclusion that the plaintiffs have no case.

I do not propose writing an argumentative brief, but it seems to me that their bill might be bad for want of equity. The plaintiffs are both Mississippi concerns in fact. The Sea Food Company is admittedly so, whilst the Foster-Fountain Packing Company is a corporation organized under the laws of Louisiana, but is composed of three stockholders citizens of Mississippi and residents

of Biloxi who own all but one share of the stock, which is held by a citizen of Louisiana, resident of New Orleans. From the fact of the charter it appears that they organized a corporation under the laws of Louisiana simply for the purpose of fixing its domicile therein. (That act provides that none but corporations domiciled in Louisiana may engage in the shrimp fishery and industry.) Of course this action amounts to a mere compliance with the letter of the law which was intended to conserve the property of the citizens of Louisiana who are actually residents of the State. It must be borne in mind that the status of a corporation *quoad* citizenship is a legal fiction. It depends upon a presumption that the stockholders are citizens of the state in which a charter is issued and the corporation has its domicile. This presumption is only available for the purpose of establishing citizenship as a jurisdictional fact in the Federal courts.

I do not call attention to this effort of plaintiffs to extend that presumption because I believe it directly affects the right of the Foster-Fountain Company to avail itself of the statute which includes Louisiana corporations, but because I think it important to consider the actual status of the parties, in considering their right to appeal to a court of Equity for relief in connection with other facts shown by the record. For instance, that this suit was filed on September 6th, 1927,

and the supporting verifications of the bill of complaint are dated respectively August 18th and August 22nd, 1927, the bill itself being one complaining of a statute passed by the Louisiana Legislature early in 1926, in which its effective date was postponed until June, 1927, the specific complaint being that the obligations of a contract between the two co-plaintiffs subjoined to the bill were impaired by the Act of the legislature referred to, whereas this contract contemplated the shrimping season just then beginning in August, 1927. It was not signed by the parties until August 14th, 1927, or almost contemporaneously with the signing of the bill of complaint. Moreover the contract contains the significant stipulation: "That it is understood between the parties hereto that the performance of this contract depends upon the ability of said Foster-Fountain Co., Inc., to purchase or catch shrimp in Louisiana, that is, if no shrimp are caught during the season 1927-1928, said season being a failure, then said Foster-Fountain Co., Inc., shall not be required to make delivery as herein agreed upon."

These facts appearing upon the face of the papers, considered together with the affidavits filed in evidence showing the active participation of these plaintiffs in the legislative proceedings which resulted in the passage of the Act by the Louisiana Legislature, seem to me to make the equity of the bill

very uncertain, and might be sufficient to justify the motion to dismiss or plea of estopel filed by the defendants. A decision need not rest upon this ground, however.

I am convinced that a consideration of the language of the statute and its contemporaneous administrative construction do not disclose a violation of either the Interstate Commerce clause (Art. 1, Sec. 8, clause 3) or of the Fourteenth Amendment, Section 1, i. e., of clause 2 prohibiting the states from making or enforcing any law abridging the privileges and immunities of citizens of the United States, or of clause 3, prohibiting a denial of due process, or of clause 4,—the equal protection clause.

Your conclusion seems largely predicated upon what Justice Monroe of the Louisiana Supreme Court said in State v. Ferrandau, 130 La. 1035, where he held that the State of Louisiana contravened the Commerce clause. I take it that a Federal Court sitting within the state will interpret for itself such federal questions, since section 721 of the Revised Statutes does not contemplate that the decisions of the highest court of the state may form rules of decision for the Federal courts to follow. I attach less importance to the fact that the Supreme Court cited that case in Lacoste vs. Department of Conservation; this citation made but a casual reference to Monroe's decision to illustrate one specific interpretation of the Commerce clause. It

is certainly not an endorsement of the conclusions reached in the Ferrandau decision. Such decisions by the courts of the states at best are of scant persuasive value. Indeed, a careful reading of the Alabama Supreme Court's decision in the State of Alabama v. Harrub (95 Ala. 176), where that court sustains a statute regulating the oyster fisheries and industry similar to if not identical with that held unconstitutional by the Louisiana Supreme Court, is much the better of these decisions.

The historical background of this case is graphically portrayed in the very extended consideration given the whole subject matter by the United States Supreme Court in Louisiana vs. Mississippi (202 U. S. 1). That case arose out of these very fishery disputes. The Supreme Court found that a condition approximating civil war had arisen out of the boundary dispute and the efforts of the two states seeking by legislation to regulate the fisheries.

With this opinion in mind, the instant case appears obviously to be a prolongation of the effort of the citizens of Mississippi to hold what they took during the many years of prolonged dispute and litigation. It was during this period that their canning industry was developed, whereby they deprived the citizens of Louisiana of the only substantial benefit that could come to them by the Supreme Court's settlement of the boundary

dispute, which gave Louisiana title to all of the fisheries on the St. Bernard Peninsula, up to and including Isle au Pitre.

This peninsula projects across the southern extremity of Mississippi Sound and almost entirely across Mississippi's southern coast line, parallel to it some eighteen miles distant, rich in wild life and sea food, accounts for the development of the canning industry at Biloxi. The present value and prosperity of Biloxi, so meticulously and sedulously detailed in the affivadits supporting the bill of complaint, reflect the effect of its successful efforts thus far, and this was in no small measure aided by the Ferrandau decision, which gave the oysters to the Mississippi canneries.

Strictly speaking these facts are irrelevant and immaterial to the Federal question involved. We might well remove from consideration all of the references to the differences in climatic conditions in favor of Biloxi, which are after all differences of geography, or rather of topography, than of climate. Even if this were not so, the record clearly manifests that the defendants believe just as firmly in the possible industrial development of Slidell and other Louisiana points in St. Tammany, St. Bernard, Plaquemines and Terrebonne parishes, which will draw after it the necessary picture shows, other amusements and facilities necessary to make the

laboring population remain constant as residents of their place of employment.

The sole question presented, it seems to me, arises under the Interstate Commerce clause. The Commerce clause does not contemplate the fisheries within a state. The Louisiana statute is not aimed at commerce. It contemplates the industry as distinguished from the commerce that arises out of or rather is part of the fisheries. The plain purpose of the Act was to conserve to the citizens of Louisiana, as owners of the fisheries, the benefit of that property. The sale of shrimp may be either in the raw state or in a packed, canned or sun-dried state. It is for the State as trustee for the people to say whether or not the shrimp may be put in commerce at all, or to what extent and under what terms title thereto may pass to buyers in its market. The power of Congress does not come into play until they are susceptible of barter, sale or exchange in commerce.

It seems ridiculous to me to say that the protection of the industrial part of the fisheries is not a conservation of the resources of the State; or that the citizens of another state may build up an industry in their own state by taking property which belongs to their neighbors; or that these "aliens" have the right to complain when their neighbors exclude them from participation in their property; or that such claims may be justified on the ground that they are citizens of the

United States, and so privileged and immune; or that they are discriminated against and denied the equal protection of the laws of their neighbor state.

The cases of Manchester v. Mass., 139 U. S. 240, and McCready v. Virginia, 94 U. S. 391, define the territorial jurisdiction of states and their right to control their fisheries, whether the fish be migratory, free swimming fish, or free moving fish, or fish attached to or embodied in the soil, even where these exist within the open sea within the territorial limit and subject to the common right of navigation. This control is wholly and exclusively under the sway of the riparian state.

In quoting these decisions in the Louisiana-Mississippi boundary decision (202 U. S. 1), the Supreme Court said that this sway extended over all fish or pearls or amber or other products of the sea. In McCready v. Virginia, the Supreme Court held that each state owns the beds of all tidewaters within its jurisdiction and may appropriate them, to be used by its citizens as a common for taking and cultivating fish, if navigation be not thereby obstructed. That the right which the citizens of the state thus acquire is a property right and not a mere privilege or immunity of citizenship; that the second section of the fourth article of the Constitution, which declares that the "citizens of each state shall be entitled to all privileges and

immunities of citizens of the several states", does not vest the citizens of one state with any interest in the common property of citizens of another state; and finally, that Virginia had the right to exclude all but her own citizens from planting oysters in her own tidewater, and that this was neither a regulation of commerce nor a violation of any privilege or immunity of interstate citizenship.

Discussing the ownership of the people in their united sovereignty of all fish, the Supreme Court said that the title, thus held by the state for them, is subject only to the paramount rights of navigation, the regulation of which in respect to foreign and interstate commerce has been granted to the United States. There has been, however, no such grant of power to the Federal government over the fisheries, which remain in the exclusive control of the state. Their right comes to the people of the state not by virtue of their citizenship merely, but of citizenship and domicile united; that is to say by virtue of a citizenship confined to that particular locality. Commerce has nothing to do with the land or water while producing, but only with the product after it had become the subject of trade. Such property can not become the subject of trade or commerce except the state wills it so.

In my view the principles established by these decisions and followed in numerous

others indicated in Vol. 9, pp. 66 *et seq.* of Rose's Notes show the Ferrandau decision to be entirely out of line with the recognized current of jurisprudence, more especially in the following particulars:

(1) Subject to paramount right of navigation, each state owns land under tide waters within its jurisdiction, and may appropriate it to citizens as common for taking and cultivating fish;

(2) The right of fishery granted by state to citizens is property right and not mere privilege or immunity of citizenship;

(3) Constitutional guaranty of privileges and immunities does not vest citizens of one state with interest in common property right of fishery of citizens of another state;

(4) The right to plant oysters (or take shrimp) is not a privilege of interstate citizenship, and law granting such right to citizens only is not commerce regulation.

In my opinion these principles should be applied to the instant case. It is apparent to me that the Legislature when passing the Act complained of unnecessarily contracted its power, shrinking within the strictures sought to be imposed by the Ferrandau decision in fear of conflicting with the commerce clause as there defined, whereas the

Act might well have more directly have accomplished its legitimate purpose to conserve the shrimp for its citizens so that they might actually enjoy the *usus, fructus, et abusus* of their property thereafter, placing it in interstate commerce upon such terms as it might deem wise, all in the proper exercise of its police power, which includes the promotion of the people's welfare, protecting them in and conserving to them their own property as well as the protection of their safety, health and morals.

So too, the Legislature manifestly opened the door to such corporations as Foster-Fountain Company by erroneously extending the presumption of citizenship in corporations, when they permitted the domicile only of the corporation formed by citizens of any other state to participate in the fisheries with its own citizens.

However, when we consider that no burden can be placed upon interstate commerce by withholding property from commerce; that if the state has the right to withhold all of a commodity from interstate commerce, that right certainly includes the right to withhold part thereof, particularly while the title is in the state; that whilst the power of Congress is paramount over interstate commerce, it has no power whatever over an intra-state industry or of even intra-state commerce; that the state has the right to exert its police power even where it might

indirectly or remotely affect interstate commerce, provided there is a real connection between the actual provisions of the police measure and the purpose sought to be accomplished, and provided that purpose is the conservation of either the safety, health, morals or welfare of its people, then such a purpose as that of withholding all or a part of the shrimp belonging to the people from flowing into commerce until they have enjoyed the local industry and profit that comes of its ownership within the state is a legitimate, reasonable exercise of the right both to conserve the property to its owners and promote their welfare.

This is squarely contrary to the conclusion reached in the Ferrandau case. It is opposed to the idea that conservation contemplates the mere keeping or confining of the product within the state and not include a conservation of the whole property comprising the industrial part of the fishery belonging to the people.

My conclusion therefore is that neither the act nor the method of its administration are in conflict with the Federal Constitution; that even though the Act had provided for some specified portion of the shrimp to be shipped in the natural state, as some of the affidavits seem to indicate, the state would still be within its rights since, if they might withhold all from commerce, they can certainly hold a part. In this connection, though,

I am not all satisfied from the affidavits that the state officers are making such construction of the statute. There are very convincing affidavits to the contrary in the record, which indicate that perhaps some raw or green shrimp may be clandestinely or illicitly sent out of the state without the knowledge of the conservation officer, and of course the state would not be bound by such acts.

I am sending a copy of this to Judge Foster.

With best wishes and kindest personal regards, I am,

Very truly yours,

(Signed) LOUIS H. BURNS."

COPY COPY

December 23, 1927.

"Hon. Edwin R. Holmes,
Hon. Louis H. Burns,
United States District Judges.

My dear Judges:

I have had an opportunity to look into the case of Foster Fountain Company vs. Haydel and have reached the conclusion that the restraining order should be recalled and the preliminary injunction refused. I think the case of State vs. Ferrandau, 130 La. 1035, (58 South. 870) may be distinguished from other cases dealing with the subject without

impairing its authority. In that case the Act under consideration permitted the unlimited sale of oysters grown in Louisiana waters in interstate commerce provided they were not intended for canning. Judge Monroe's opinion seems to be based on this provision on the ground that it would be an unwarranted interference with interstate commerce to attempt to control the ultimate disposition of the oysters after they had entered into interstate commerce.

I think the principles of law governing the case before us may be stated as follows: The ownership of all the shrimp caught in Louisiana waters is in the State as a trustee for the whole people. It may absolutely prohibit the catching of shrimp in those waters by anyone or may permit their being caught by resident citizens of Louisiana alone. Therefore, in allowing the catching of shrimp the State may impose conditions as to the manner of catching, seasons in which they may be caught, and their ultimate shipment. It follows that the State may also impose conditions as to the disposal of the shrimp and there is no interference with interstate commerce until that commerce has begun. The mere intention to ship to other states does not create interstate commerce.

Act 103 of 1926 is somewhat ambiguous in its terms but there is no doubt that it prohibits the catching of shrimp by any one not domiciled in Louisiana and vests only quali-

fied ownership in the shrimp after they are reduced to possession. It also clearly prohibits the exportation of shrimp hulls and heads and prohibits the shipment of shrimp unless the hulls and heads have been removed. I think this was within the province of the Legislature and we are not concerned with the motive of the Legislature nor with whether the provisions are unreasonable. In my opinion these conclusions are supported by the cases of Geer vs. Connecticut, 161 U. S. 519; Manchester vs. Massachusetts, 139 U. S. 240; Lacoste vs. Department of Conservation, 263 U. S. 545, and various other decisions of the United States Supreme Court referred to in those above cited.

I can see no reason to have a further conference on the case, and it is desirable that it be decided before the first of January, as I understand that on that date the oyster law will become effective and it is quite probable that another suit will be brought to test its constitutionality. Kindly advise me of your views as soon as possible.

With kindest regards and wishing you both the compliments of the season,

I remain,

Sincerely yours,
(Signed) Rufus E. Foster."

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Nos. 768 and 769

In the Supreme Court of the United States

OCTOBER TERM 1927

No. ~~768~~ 68

FOSTER FOUNTAIN PACKING COMPANY, INC., AND SEA FOOD COMPANY,

Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC ET AL.

No. ~~769~~ 69

L. O. JOHNSON, JR., AND SEA FOOD COMPANY, TANAS HEBERT ET AL.,

Appellants,

versus

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC ET AL.

Brief for Department of Conservation of Louisiana

Appellee.

JOHN DYMOND, JR.,
A. GIFFEN LEVY,
Special Attorneys for the Department of Conservation of Louisiana.

DYMOND & LEVY,
of Counsel.

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STATEMENT OF GROUNDS OF JURISDICTION

The statement in the brief of Appellants is adopted, and shows, we submit, that this court has jurisdiction of these appeals.

STATEMENT OF FACTS

The legislative acts of Louisiana which are the subject of this litigation are the Shrimp and Oyster Acts, being Acts 103 and 258, respectively, of 1926. (Records pp. 2).

The sections of these laws which are complained of have been printed in Appellants' brief. There are, however, additional facts of record which have not, we think, been sufficiently stated.

Shrimp Heads and Hulls and Oyster Shells Are Important and Valuable Natural Resources.

Appellants have sought to minimize the importance and extent of the conservation and use in Louisiana of its natural resources in the matter of the heads and hulls of shrimp and the shells of oysters.

It was shown by the State of Louisiana that "large use is being made in the State of Louisiana of the oyster shells gathered from the waters of said state. There are in the parish of St. Mary, at Berwick and at Morgan City, Louisiana, two large shell crushing factories, one at each place, making chicken feed out of oyster shells. There is another factory that has been erected on the Hays Canal in Plaquemines Parish, which is not yet in operation, but it is expected will shortly be put in operation.

"Large use of oyster shells for road building and ballast purposes is being made also of the oyster shells from Louisiana waters."

(See Record No. 769, pp. 86, 87).

It is also shown that "There is great use made in Louisiana of oyster shells and this use is increasing. They are used for chicken feed when ground, and the demand for this is larger than the present supply. There is one large factory at Berwick, La., and another at Morgan City, La., and there is a factory just completed in Plaquemines Par-

ish on the west bank of the Mississippi River. Wherever oyster shells are available they are largely used for road building, and they can be used for fertilizer when converted into lime. One of the most important uses for oyster shells is as cultch where the shells are returned to the waters for the purpose of the young oyster spat setting theron for propagation purposes, and vast quantities are used for this purpose. Where the Louisiana reefs are depleted of the oysters by the fishermen who remove the oysters in the shell beyond the state, these shells never come back to Louisiana, and there is nothing done to develop the reefs or keep them producing.

"Oyster shells are largely used for railroad track ballasting on account of the soft, alluvial character of the Louisiana soil."

(See Record 769, pp. 88, 89).

The proof in the matter of the use of shrimp hulls and heads is equally ample and is found in Record No. 768 at pages 117 et seq.

It is shown that Dunbar, Dukate Company, Inc., operates at Westwego, La., an extensive plant for the drying of such shrimp heads and hulls, and photographs very illuminative of the extent of such plant are of record.

(Record No. 768, pp. 117, 118). These photographs are reproduced in an appendix to this brief.

The affidavit of C. F. Greiner establishes the extent to which another Louisiana factory utilizes these natural resources which otherwise are wasted and indeed become an unsanitary menace to health. (Record No. 768, p. 125).

The affidavit of R. L. Colson establishes that there are in Louisiana twelve plants for drying shrimp heads and hulls and only one in Mississippi, and shows that these heads and hulls are a valuable fertilizer supply. (Record No. 768, pp. 127, 128).

The affidavits of Jas. V. Dunbar and L. H. Jastremski are to the same effect. (Record No. 768, pp. 128 to 132 inclusive).

Shrimp and Oyster Laws Impartially Administered

Appellants would have the Court believe that the records show that the shrimp and oyster laws in question are so administered that they become unconstitutionally discriminatory, in that Louisiana citizens are permitted to violate the acts and to ship in interstate commerce oysters in the shells and shrimp with heads and hulls.

The records do not support the contention.

The affidavit of Percy Viosca, Jr., Director of the Fisheries Division of the Department of Conservation of Louisiana, establishes (Record 768, pages 39 to 53, inclusive):

That he is an expert biologist and an authority on shrimp, and that the portion of the shrimp act under discussion which pertains to living shrimp in Louisiana waters is based upon affiant's scientific study. He further states:

"Affiant ascribes the abundance of common salt water shrimp in Louisiana to two factors: (1) Mud bottoms of alluvial origin, which is their favorite habitat and in which they can conceal themselves from their enemies by burying themselves, since they do not live amongst vegetation as do most other species of shrimp; and (2) to the abundance of the chief food of immature shrimp, which consists mainly of roots, stems and leaves of salt marsh grasses, which are constantly washed into the lakes and bays of our salty marshy country by the waves and by receding tides.

"The chief purpose of the present Louisiana Shrimp Law is to conserve these immature shrimp until they reach the marketable size, as large quantities of them are sometimes

destroyed illegally before they reach the size of economic value."

On the subject of the enforcement of that part of the shrimp act which prohibits the shipping of whole shrimp out of Louisiana, this witness states (Record 768, pp. 40, 41):

"Affiant avers that as the head of the Fisheries Division of the Conservation Department he is prepared to state of his own knowledge that there is no evidence in possession of the Department of Conservation coming through its agents, or otherwise, which indicates that the shipments of shrimp procured from the waters of the State of Louisiana have been shipped outside of the State without first removing the heads and hulls therefrom and especially since Act 103 of 1926 became effective.

"Affiant avers that the aforesaid Act 103 of 1926 does not relate to the head and hulls of shrimp caught outside of the waters of the State of Louisiana, nor beyond the three mile limit in the Gulf of Mexico; that the Conservation Department has no jurisdiction over shrimp caught in the Gulf of Mexico outside of the three mile limit, and such shrimp as may have been shipped from the State of Louisiana since the adoption of Act 103 of 1926, have, so far as affiant knows, and so far as the records of the Department of Conservation show, have been only of such shrimp as have been caught beyond the limits of the State of Louisiana and these are not the character of shrimp contemplated by the provisions of the aforesaid Act 103 of 1926.

"Affiant knows of his own knowledge that large quantities of shrimp are caught in the waters outside of the State of Louisiana at all seasons of the year, but that these shrimp are not within the jurisdiction of the Conservation Department.

"Affiant knows of his own personal knowledge that there have been no salt water shrimp caught in the waters of

Louisiana since the adoption of the aforesaid Act 103 of 1926 and shipped beyond the limits of the State of Louisiana, unless they have been so caught and so shipped in a surreptitious and illegal manner, despite the vigilant activity of the agents of the Conservation Department to detect all violators of the law; that no such shrimp is being caught and shipped to the knowledge of anyone connected with the Fisheries Division of the Department of Conservation, nor have any such shipments been permitted on appeals, affidavits or otherwise, to the knowledge of the Fisheries Division of the Department of Conservation of Louisiana."

He further states (Record 768, pp. 41, 42, 43):

"Affiant avers that there is a difference in the shape and color of the shrimp caught in inland lakes and bays of Louisiana and those caught in the open Gulf, with the exception that in periods of very low water or excessively rainy seasons, immature shrimp of the color usually found in inside waters are sometimes carried out to sea and will occasionally be found to be mixed with adult sea shrimp of different appearance.

"Affiant avers that there is no record of adult salt water shrimp ever being taken in inside waters of the State of Louisiana.

"Affiant avers that the Complainant, Foster-Fountain Company, Inc., while alleging in its Bill of Complaint that salt water shrimp have been caught in Louisiana waters and shipped with hulls and heads on beyond the limits of the State, that no evidence of such shipments have been tendered to the Department of Conservation of Louisiana; but, on the contrary, all certificates relating to the shipment of shrimp required to be filed under oath with the Conservation Department of Louisiana, have indicated and evidenced that all such shipments of shrimp have been made only after the shrimp have been picked, said certificates being identical in form with that which the Complainant, Foster-Fountain Company, Inc., has

filed with the Conservation Department of Louisiana, as of October 21, 1927, the original of which is hereto annexed and made a part hereof and is marked Exhibit 'B'.

"Affiant avers that permits are issued by the Department of Conservation to persons, firms and corporations desiring to catch salt water shrimp within the limits of the State of Louisiana and that said permit is a contract between the applicant and the State of Louisiana by which the applicant agrees that he shall comply with every provision of law, particularly Act 103 of 1926 relating to the catching, drying and packing of shrimp within the State of Louisiana, and that the Complainant, Foster-Fountain Co., Inc., has ever since the adoption of said Act 103 of 1926 filed the required applications for permission to take salt water shrimp from Louisiana waters, which aforesaid applications and permits have contained the contractual obligation referred to, the last applications and permits of the aforesaid Foster-Fountain Co., Inc., having been filed and issued as of date September 1, 1927, as evidenced by the aforesaid application of the Foster-Fountain Co., Inc., hereto attached and made a part hereof and marked Exhibits 'S'.

"Affiant further avers that identical applications and permits by the Complainant, Sea Food Company, were made by said Sea Food Company and granted by the Department of Conservation as of date September 12, 1927, as per original application hereto annexed and made a part hereof and marked Exhibit 'E'.

"Affiant avers that a similar application was made by Complainant, Foster-Fountain Co., Inc., to operate boats solely within Louisiana waters for the transportation of shrimp within the limits of Louisiana and not beyond, as evidenced by the application of the said Foster-Fountain Company, Inc., dated September 1st, 1927, a certified copy of which is hereto annexed and made a part hereof, marked Exhibits 'G' and 'H'.

"Affiant avers that he makes the foregoing declarations solely of his own knowledge and not from hearsay."

There are in evidence (see Record 768, pages 46 to 53 inclusive) as exhibits to Mr. Viosca's affidavit, copies of documents which show the extreme care which the Department of Conservation of Louisiana is taking to prevent the evasion of the law and the illegal exportation of salt water shrimp in the hull.

The oyster law is enforced with equal impartiality and vigor, as the Record 769 shows.

Dr. V. K. Irion, Commissioner of Conservation for Louisiana, states (Record No. 769, p 87):

"I am advised that there have been filed in connection with the Bill of Complaint in this matter affidavits to the effect that to my knowledge oysters in the shell are permitted to be exported from the State of Louisiana. This assertion of fact is not true. I do not deny that there may be some bootlegging in raw oysters as bootlegging is done in other articles. I have endeavored and am continuing to endeavor, through all my officers, to impartially enforce the oyster law of the State of Louisiana, and none of my officers nor do I knowingly permit any violations of the conservation laws of Louisiana."

James N. McConnell, Director of the Oyster Division of the Department of Conservation of Louisiana, states (Record No. 769, p. 88):

"I am the director of the Oyster Division of the Department of Conservation, and it comes within my duties to enforce the provisions of Act 258 of the Legislature of the State of Louisiana for the year 1926, known as the oyster law. * * *

"The Conservation Department of Louisiana is prepared to enforce this Louisiana law and has been enforcing it against everyone until restrained in this case by the court order."

ARGUMENT

Summary.

It is proposed to show the constitutionality of the statutes in question by establishing the following propositions:

1. The State of Louisiana owns in its sovereign capacity for the benefit of its own people tide-water bottoms and the beds of navigable streams within her territorial jurisdiction together with all of the natural oyster reefs and the shrimp to be found upon those bottoms or in the waters above them.

   McCready vs. Virginia, 94 U. S., 391;
   Manchester vs. Massachusetts, 139 U. S., 240;
   Geer vs. Connecticut, 161 U. S., 519;
   Lacoste vs. Department of Conservation, 263 U. S., 545.

2. Because of such ownership, and in the exercise of its police power, the State may regulate and control the taking, subsequent use, and property rights that may be acquired in such oysters and shrimp.

   ib.

3. The State may grant to its own citizens the right to take such oysters and shrimp, and deny the right to citizens of other States.

   McCready vs. Virginia, 94 U. S., 391.

4. A State statute providing that only citizens, firms or corporations possessing adequate equipment for conserving shrimp and oysters may take them from waters of the State is not violative of the 14th Amendment.

   Lacoste vs. Department of Conservation, 263 U. S., 545.

5. A statute prohibiting oysters and shrimp from being exported from the State until the hulls and shells shall have

been removed is not void as a regulation of interstate commerce.

Geer vs. Connecticut, 161 U. S., 519.

6. The State's power to regulate and condition the manner of reducing shrimp and oysters to private ownership is not destroyed by the fact that it is contemplated that such private property will ultimately move in interstate commerce.

Lacoste vs. Department of Conservation, 263 U. S., 545.

7. The asserted right to take and deal with natural reef oysters and salt water shrimp and to contract with relation thereto, without reference to a state law regulating the reduction of such wild life to private ownership, is not a property right, and is not protected by the 14th Amendment to the Constitution.

Geer vs. Connecticut, 161 U. S., 519;
Barbier vs. Connolly, 113 U. S., 27;
N. O. vs. N. O. Waterworks Co., 142 U. S., 79.
Lacoste vs. Department of Conservation, 263 U. S., 545;

8. Proof of violations of a prohibitory law does not even tend to show the unconstitutionality of that law as a denial of equal protection of the law, or that the State should be enjoined from enforcing such statute.

Mackay vs. Little Rock, 250 U. S., 94.

9. The grant to a corporation of a charter does not exempt it from the operation of the police power of the state, nor preclude the state from enacting laws reasonably regulating the corporation's powers, the use of its property and the conduct of its business as the public good may require.

12 Corpus Juris, 1038;
Texas, etc., R. R. vs. Miller, 221 U. S., 408.

FOREWORD

MAY IT PLEASE THE COURT:

The historical background of these cases is graphically portrayed in the very extended consideration given the whole subject matter by the United States Supreme Court in Louisiana vs. Mississippi (202 U. S. 1). That case arose out of these very fishery disputes. The Supreme Court found that a condition approximating civil war had arisen out of the boundary dispute and the efforts of the two states seeking by legislation to regulate the fisheries.

With this opinion in mind, the instant cases appear obviously to be a prolongation of the effort of the citizens of Mississippi to hold what they took during the many years of prolonged dispute and litigation. It was during this period that their canning industry was developed, whereby they deprived the citizens of Louisiana of the only substantial benefit that could come to them by the Supreme Court's settlement of the boundary dispute, which gave Louisiana title to all of the fisheries on the St. Bernard Peninsula, up to and including Isle au Pitre.

This peninsula projecting across the southern extremity of Mississippi Sound and almost entirely across Mississippi's southern coast line, parallel to it some eighteen miles distant, rich in wild life and sea food, accounts for the development of the canning industry at Biloxi. The present value and prosperity of Biloxi, so meticulously and sedulously detailed in the affidavits supporting the bill of complaint, reflect the effect of its successful efforts thus far.

Strictly speaking these facts are irrelevant and immaterial to the Federal questions involved. We might well remove from consideration all of the references to the differences in climatic conditions in favor of Biloxi, which are after all differ-

ences of geography, or rather of topography, than of climate. Even if this were not so, the record clearly manifests that the defendants believe just as firmly in the possible industrial development of Slidell and other Louisiana points in St. Tammany, St. Bernard, Plaquemines and Terrebonne parishes, which will draw after it the necessary picture shows, other amusements and facilities necessary to make the laboring population remain constant as residents of their place of employment.

We proceed to a consideration of the constitutional questions involved.

I

The statutes under consideration, Acts 103 and 258 adopted by the Legislature of Louisiana in 1926, which are referred to respectively as the Shrimp and Oyster laws, are intended to conserve to the people of Louisiana their very valuable natural resources in shrimp and oysters.

In the first Section of each act, the State of Louisiana has declared and asserted that sovereign control and proprietorship over natural wild life which this court has so unmistakably declared belong to the States.

We quote these sections:

Act 103 of 1926.

> "Section 1. Be it enacted by the Legislature of Louisiana, That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said salt water shrimp shall be and are hereby declared to be the property of the State; until the title thereto shall be divested in the manner and form herein authorized and shall be under the exclusive control of the Department of Conservation of the State of Louisiana, until the right of private ownership shall vest therein as herein pro-

vided, and that no person, firm or corporation shall catch or have in their possession, living or dead, any salt water shrimp, or parts thereof, or purchase, sell or offer for sale, any such shrimp or parts thereof, after same have been caught except as otherwise permitted herein."

Act 258 of 1926.

"Section 1. Be it enacted by the Legislature of Louisiana, That all beds and bottom of rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets bordering on, or connecting with the Gulf of Mexico, in this State, and that part of the waters of the Gulf of Mexico, within the territorial jurisdiction of the State of Louisiana, including all oysters and other shell fish and parts thereof, grown thereon, either naturally or cultivated, and all oysters in the shells after the same shall have been caught or taken therefrom, shall be, continue and remain, the property of the State of Louisiana, until the title thereto shall be divested in the manner and form herein authorized; and shall be under the exclusive control of the Department of Conservation of the State of Louisiana until the right of private ownership shall vest therein, as herein provided.

"Nothing in this Act shall be so construed as affecting in any way the leasing of said waters for mineral purposes under the provisions of Act No. 30 of the Legislature of 1915, providing that if the mineral rights on any water bottom previously leased for oyster culture are granted by the State it shall be done only with the written consent previously obtained of the lessee of such water bottoms for oyster culture purposes, or by previous compensation, of adequate amount, paid to said oyster lessee by said mineral lessee for any and all damages sustained by said oyster lessee.

"No grant, sale or conveyance of the lands forming the bottoms of water shall hereafter be made by the Register of the State Land Office, or by any other official, or by any subordinate political corporation. The rights of the owners or occupants of lands on the shores of any of the waters hereinbefore described shall extend to the ordi-

nary low mark only and no one shall own in fee simple any bottoms of lands, covering the bottoms of water hereinbefore described."

It is submitted that Louisiana's right to make these declarations of control and ownership of these natural resources is undeniable.

Smith vs. Maryland, 59 U. S., 270; 15 L. Ed., 269.

In 1855, passing upon the constitutionality of a statute of Maryland penalizing the taking of oysters in any other manner than designated by the statute, this Court held the act to be constitutional, and said:

> "Whatever soil below low water mark is the subject of exclusive propriety and ownership belongs to the state on whose maritime border and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory before the Declaration of Independence.
>
> *"Pollard's Lessee vs. Hagan,* 3 How. 212; *Martin vs. Waddell,* 16 Pet., 367; *Den vs. The Jersey Co.,* 15 How. 426.
>
> "But this soil is held by the State, not only subject to, but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shell fish as floating fish. * * *
>
> **"The State holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public right less valuable; or destroy it altogether."**

McCready vs. Virginia, 94 U. S., 391; 24 L. Ed., 248.

In 1877, this Court epitomized the therefore more general expressions of similar purport, and held:

> "The precise question to be determined in this case is,

whether the State of Virginia can prohibit the citizens of other States from planting oysters in Ware River, a stream in that State where the tide ebbs and flows, when its own citizens have that privilege.

"The principal has long been settled in this court, that each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. *Pollard v. Hagan*, 3 How., 212; *Smith v. Md.*, 18 How., 74 (59 U. S., XV., 270); *Mumford v. Wardwell*, 6 Wall., 436 (73 U. S., XVIII., 761); *Weber v. Comrs.* 18 Wall., 66 (85 U. S., XXI., 802). In like manner, the States own the tide-waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its People, and the ownership is that of the People in their united sovereignty. *Martin vs. Waddell*, 16 Pet., 410. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right in its discretion, to appropriate its tide-waters, and their beds to be used by its People as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. **Such an appropriation is, in effect, nothing more than a regulation of the use by the People of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship.** * * *

"Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one State are not invested by this clause of the Constitution (Article IV., Sec. 2) with any interest in the common property of the citizens of another state. If Virginia had by law provided for the sale of its once vast public domain, and a division of the proceeds among its own people, no one, we venture to say, would contend that the citi-

zens of other States had a constitutional right to the enjoyment of this privilege of Virginia citizenship. Neither if, instead of selling, the State had appropriated the same property to be used as a common by its people for the purposes of agriculture, could the citizens of other States avail themselves of such a privilege. And the reason is obvious; the right thus granted is not a privilege or immunity of general but of special citizenship. It does not 'belong of right to the citizens of all free governments', but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed. They, and they alone, owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit. **They owned it not by virtue of citizenship merely, but of citizenship and domicile united; that is to say, by virtue of a citizenship confined to that particular locality."**

Manchester vs. Massachusetts, 139 U. S., 240; 35 L. Ed., 159.

In 1891, this Court again affirmed this doctrine of State sovereignty over the tide-waters and beds of tide-waters and all fish therein and thereon and held that each state owns the tide-waters and beds of tide-waters within its jurisdiction, and that subject to the paramount right of navigation, fisheries remain under the exclusive control of the State.

Geer vs. Connecticut, 161 U. S., 519; 40 L. Ed., 793.

In 1896, Mr. Justice White of this Court confirmed this doctrine, of sovereign proprietorship in wild game, holding:

"Undoubtedly this attribute of government to control the taking of animals *ferae naturae*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters, or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the states with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not

incompatible with, or restrained by the rights conveyed to the Federal government by the Constitution. Kent, in his Commentaries, states the ownership of animals *ferae naturae* to be only that of a qualified property. 2 Kent, Com. 347. In most of the states, laws have been passed for the protection and preservation of game. We have been referred to no case where the power to so legislate has been questioned, although the books contain cases involving controversies as to the meaning of some of the statutes. * * *

"The adjudicated cases recognizing the right of the state to control and regulate the common property in game are numerous. In *McCready vs. Virginia*, 94 U. S. 395 (24:248), the power of the state of Virginia to prohibit citizens of other states from planting oysters within the tide waters of that state was upheld by this court. In *Manchester vs. Massachusetts*, 139 U. S. 240 (35:159), the authority of the state of Massachusetts to control and regulate the catching of fish within the bays of that state was also maintained. See also *Phelps vs. Racey*, 60 N. Y. 10, 19 Am. Rep. 140; *Magner vs. People*, 97 Ill. 320; *American Exp. Co. vs. People*, 133 Ill. 649, 9 L. R. A. 138; *State vs. Northern P. Exp. Co.* 58 Minn. 403; *State vs. Rodman*, 58 Minn. 393; *Ex parte Maier*, 103 Cal. 476; *Organ vs. State*, 56 Ark. 270; *Allen vs. Wyckoff*, 48 N. J. L. 93; *Roth vs. State*, 51 Ohio St. 209; *Gentile vs. State*, 29 Ind. 415; *State vs. Farrell*, 23 Mo. App. 176, and cases there cited; *State vs. Saunders* and *Territory vs. Evans, ubi supra.*

"Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good. Therefore, for the purpose of exercising this power, the state, as held by this court in *Martin vs. Waddell*, 41 U. S. 16

Pet. 410 (10:1012), represents its people, and the ownership is that of the people in their united sovereignty. The common ownership, and its resulting responsibility in the state, are thus stated in a well considered opinion of the supreme court of California: **'The wild game within a state belongs to the people in their collective sovereign capacity. It is not the subject of private ownership, except insofar as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or any traffic and commerce in it, if deemed necessary for its protection or preservation, or the public good.'**

Ex parte Maier, ubi supra.

"The same view has been expressed by the supreme court of Minnesota as follows:

"We take it to be the correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor but in its sovereign capacity, as the representative and for the benefit of all its people in common.' *State vs. Rodman, supra.*

"The foregoing analysis of the principles upon which alone rests the right of an individual to acquire a qualified ownership in game, and the power of the state, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the state of Connecticut here in controversy."

The Abby Dodge vs. United States, 223 U. S. 166; 56 L. Ed., 390.

In 1912, this Court further emphasized the doctrine by holding that sponges growing under territorial waters of the State of Florida were subject to control by Florida and not by the United States Congress.

Gratz vs. M'Kee, 258 Fed. 335, 338.

In 1919, the U. S. Circuit Court of Appeal for the Eighth Circuit, held:

> "The elementary authorities, in our judgment, sustain the views above expressed, and seem to be in line with the statute of the state of Missouri in regard to the public waters of said state. The term 'fish' includes the different kinds of shellfish, such as oysters, clams and lobster. *Moulton vs. Libbey*, 37 Me. 472, 59 Am. Dec. 57; *Caswell vs. Johnson*, 58 Me. 164; note, 60 L. R. A. 516; 11 R. C. L. 1015. Fish, generically speaking, on account of their migratory character and want of a fixed habitat, are classified as animals *ferae naturae*. Their ownership while they are in a state of freedom is in the state, not as a proprietor, but in its sovereign capacity, as the representative and for the benefit of all its people in common, and the ownership thereof may not be claimed by any particular individuals. 11 R. C. L. 1015, 1016; *State vs. Heger*, 194 Mo. 711, 93 S. W. 252; *State vs. Weber*, 205 Mo. 36, 102 S. W. 955, 10 L. R. A. (N. S.) 1155, 120 Am. St. Rep. 715, 12 Ann. Cas. 382.
>
> "The difference in the locomotive powers of swimming fish and shellfish, however, justifies a distinction as to their ownership. In their natural state shellfish, like swimming fish, are classified as *ferae naturae*, and their ownership is vested in the state in its sovereign capacity. 19 Cyc. 988, B.; R. C. L. 1017."

Lacoste vs. Department of Conservation, 263 U. S. 545; 68 L. Ed., 437.

In 1924, this Court again affirmed the principle of state sovereignty over animals *ferae naturae* within her borders, holding:

> **"The wild animals within its borders are, so far as capable of ownership, owned by the state in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power, the state may regulate and**

> **control the taking, subsequent use, and property rights that may be acquired therein,** *Geer vs. Connecticut*, 161 U. S. 519, 528, 40 L. ed. 793, 796, 16 Sup. Ct. Rep. 600; *Ward vs. Race Horse*, 163 U. S. 504, 507, 41 L. ed. 244, 245, 16 Sup. Ct. Rep. 1076; New York ex rel. Silz vs. Hesterberg, 211 U. S. 31, 39, 53 L. ed. 75, 79, 29 Sup. Ct. Rep. 10; Patsone vs. Pennsylvania, 232 U. S. 138, 143, 58 L. ed. 539, 543, 34 Sup. Ct. Rep. 281; New York ex rel. Kennedy vs. Becker, 241 U. S. 556, 562, 60 L. ed. 1166, 1171, 36 Sup. Ct. Rep. 705; Carey vs. South Dakota, 250 U. S. 118, 63 L. ed. 886, 39 Sup. Ct. Rep. 403; State vs. Rodman, 58 Minn. 393, 400, 59 N. W. 1098."

It is not thought that appellants will seriously question the correctness of these cardinal principles of sovereign ownership and control by the State of the fish, oysters and wild game within her territorial limits; and we therefore proceed to consideration of the effect which recognition of these principles involves.

II

It follows immediately as a corollary, that because of its sovereign ownership, and also in the exercise of its inherent police power, **the State may regulate and control—nay even prevent—the taking, subsequent use and property rights that may be acquired in shrimp, oysters and other fish or game within her borders.**

The authorities above cited support this doctrine completely as quotations from the cases already made indicate.

Geer vs. Connecticut (*supra*) recognized this right of regulation and control, where it was held:

> "The adjudicated cases recognizing the right of the state to control and regulate the common property in game are numerous. In McCready vs. Virginia, 94 U. S. 395 (24:248) the power of the state of Virginia to prohibit citizens of other states from planting oysters

within the tide waters of that state was upheld by this court. In Manchester vs. Massachusetts, 139 U. S. 240 (35:159), the authority of the state of Massachusetts to control and regulate the catching of fish within the bays of that state was also maintained."

In Lacoste vs. Department of Conservation (*supra*) it was distinctly held on page 439 of the Lawyers' Edition Vol. 68:

> "The wild animals within its borders are, so far as capable of ownership, owned by the state in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power, the state may regulate and control the taking, subsequent use, and property rights that may be acquired therein."

Again at page 440 the Court held with respect to the imposition of the severance tax on the skins of animals *ferae naturae*:

> **"The legislation is a valid exertion of the police power of the state to conserve and protect wild life for the common benefit. It is within the power of the state to impose the exaction as a condition precedent to the divestiture of its title and to the acquisition of private ownership."**

Again in the Lacoste case at page 441, it is said:

> "Wild animals permitted by the state to be taken and reduced to possession on prescribed conditions may reasonably be distinguished from other classes of property. Compare Geer vs. Connecticut, 161 U. S. 519, 528, 40 L. ed. 793, 796, 16 Sup. Ct. Rep. 600; Ohio Oil Co. vs. Indiana, 177 U. S. 190, 208, 44 L. ed. 729, 738, 20 Sup. Ct. Rep. 576, 20 Mor. Min. Rep. 466. The 14th Amendment does not interfere with the proper exercise of the police power, Barbier vs. Connolly, 113 U. S. 27, 31, 28 L. ed. 923, 924, 5 Sup. Ct. Rep. 357; Mugler vs. Kansas, 123 U. S. 623, 663, 31 L. ed. 205, 211, 8 Sup. Ct. Rep. 273; Powell vs. Pennsylvania, 127 U. S. 678,

683, 32 L. ed. 253, 256, 8 Sup. Ct. Rep. 992, 1257; Re Rahrer, 140 U. S. 545, 555, 35 L. ed. 572, 574, 11 Sup. Ct. Rep. 865; Reinman vs. Little Rock, 237 U. S. 171, 177, 59 L. ed. 900, 903, 35 Sup. Ct. Rep. 511 **Protection of the wild life of the state is peculiarly within the police power, and the state has great latitude in determining what means are appropriate for its protection."**

III

The shrimp and oyster laws in question prohibit the taking of shrimp and oysters by any but residents of Louisiana, firms composed of residents and corporations domiciled in Louisiana.

Do these provisions violate the 14th Amendment as abridgment of the privileges or immunities of citizens of the United States?

We submit the answer is clearly negative.

McCready vs. Virginia, 94 U. S. 391; 24 L Ed., 248, 249, settled the precise question:

> **"Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one State are not invested by this clause of the Constitution with any interest in the common property of the citizens of another State."**

Wharton vs. Wise, 153 U. S. 155; 38 L. ed., 669, 676.

In 1894, this Court had occasion again to pass upon this issue, and held:

> "An act of that commonwealth (Virginia) approved in February, 1892, provided that if any person other than a resident of the State, 'take or catch oysters or other shell fish in any of the waters of the State, he

shall, upon conviction thereof, be fined five hundred dollars.' * * *

"The appellant, a citizen of Maryland, is under a judgment of imprisonment for not paying a fine and costs of prosecution imposed for unlawfully catching and taking oysters in the waters of Virginia in violation of its laws. **That state is the owner of the navigable waters within its limits and the lands under them, holding them in trust for the public, and authorized to pass all necessary laws for the protection of the fish therein, whether floating or shell, and the punishment of any citizens of its own or other states for taking them against its prohibitions.**

"The oyster grounds of the state are of large extent, very productive, and of great value. Pocomoke Sound is represented to have an area of 92 square miles, of which about 52 square miles consist of natural oyster rocks and beds, particularly adapted for the growth of the oyster. Many millions of oysters are the product from these rocks and beds each year. The business of taking them from the water and carrying them to the different markets of the country constitutes an extensive and profitable industry, giving occupation and support to several thousand people of the state and to their families, and furnishing an article of food extremely palatable and delicious to many thousands in other states. Great care is taken in their culture and protection, and a vigorous police of the state is maintained to prevent their unlawful removal, or any encroachment with respect to them upon the rights of the state. The preservation of the oysters and of these rocks and beds, so well and peculiarly fitted for their increase, has been for many years a matter of special interest on the part of the state, and the act under which the appellant was indicted and convicted constitutes a part of its legislation for that purpose."

The Court then disposes of the contention that by reason of a compact between Virginia and Maryland (the defendant being a citizen of that State) citizens of Maryland were granted fishery rights in Pocomoke Sound where defendant

was fishing, and held that this locality was not so included, and that the general law would apply.

The Court then said (page 678 of the Lawyers' Edition):

> "The offense charged against the appellant, and for which he was tried and convicted, was one against the State of Virginia, and not one against any of her individual citizens. It was for catching and taking oysters in her waters, which were the property of the state, against her prohibitions, he being a citizen of Maryland."

The conviction was by this Court affirmed.

The following cases illustrate the rule, and follow the doctrine announced by this Court in the cases above cited.

> "A constitutional provision conferring upon the citizens of each state all the privileges and immunities of citizens in the several states does not entitle the citizens of the several states to enjoy equal rights to take oysters in beds belonging to the citizens of a state in common, and which have never been ceded by that state to the United States." Corfield vs. Coryell, 4 Wash. C. C. 371, Fed. Cas. No. 3,230.

> "A statute for the preservation of clams and oysters, which prohibits the raking or gathering of these bivalves in any waters of the state, by anyone not a resident of six months' standing, extends to planted, as well as natural-grown, oysters; and, inasmuch as it merely prohibits foreigners from subverting the soil of the state and carrying away her property, while leaving vessels free to pass over the waters wherever they choose, is not in conflict with the United States Constitution as a regulation of foreign or interstate commerce; nor does it deny to citizens of other states any privilege or immunity of citizens of the state, **the state having the right to grant its property to whomsoever it chooses.**" * * * Haney vs. Compton, 36 N. J. L. 507.

"The state has the exclusive jurisdiction to regulate and control the fisheries in its waters, both tidal and fresh; and the right to fish is not given to citizens of other states by the Amendments to the Federal Constitution, nor is the state prohibited from discriminating against them.' State vs. Tower, 84 Me. 444, 24 Atl. 898.

"The legislature may prohibit the taking of oysters and shell fish in the public waters of the state, by citizens of other states, without infringing on the privileges and immunities of citizens of other states." State vs. Medbury, 3 R. I. 138.

"Each state owns the beds of all tide waters within its jurisdiction, and may grant to its own citizens the exclusive use of lands covered by water for raising oysters." State vs. Corson, 67 N. J. L. 178, 50 Atl. 780.

"The right of regulation and control of the fisheries by the several states in the interest of the public permits in every state legislation to secure the benefits of their public right in property to its own inhabitants. The rights, immunities, and privileges which are secured by the Constitution of the United States to the inhabitants of the several states do not include, in favor of the inhabitants of any state, rights in the common property of the inhabitants of the other states." Com. vs. Hilton, 174 Mass. 29, 45 L. R. A. 475, 54 N. E. 362.

"The legislature may discriminate between residents and non-residents in the right to use the waters of the state for planting and fishing for oysters. People vs. Lowndes, 130 N. Y. 455, 29 N. E. 751, Reversing 55 Hun, 469, 8 N. Y. Supp. 908.

Lubetich vs. Pollock, 6 Fed. (2d.) 237.

In the late case of *Lubetich vs. Pollock*, 1925, the United States District Court for the Western District of Washington held:

"A state owns the food fish in the waters over which it has jurisdiction, as the common property of its citi-

zens, and aliens and non-residents of the state may be constitutionally denied the right to take fish within its borders."

"A state, in prohibiting aliens from fishing in its waters, either for themselves or as employees of citizens, is not denying them their constitutional right to engage in a lawful occupation, or their employers the right to contract with whom they please, since it is dealing with its own property, as to which it may lawfully make regulations governing its own citizens as well as others."

IV

A state statute providing that only citizens, firms or corporations possessing adequate equipment for conserving shrimp and oysters may take them from the waters of the state is not violative of the 14th Amendment.

Section 4 of the Shrimp Act and Section 2 of the Oyster Act provide that only residents of Louisiana, firms composed of such residents, and Louisiana Corporations may lawfully take shrimp or oysters from Louisiana waters.

The constitutionality of this part of these sections has been discussed under point —III—, supra. Appellants argue that these sections further limit the taking of such oysters and shrimp to such Louisiana residents, firms and corporations as operate a canning or packing factory or drying platform for shrimp in Louisiana, or as have their oyster factory or shucking plant or place of business in Louisiana.

Appellants contend that these sections are unconstitutional as a denial of the equal protection of the law, and as an unwarranted discrimination.

It will be noticed that the provisions affect only Louisiana persons (including Louisiana firms and corporations as persons).

It is submitted that these oyster and shrimp acts are statutes designed to conserve to the people of Louisiana the full benefit of the State's natural resources in shrimp and oysters, and that therefore the appropriate means for protecting such natural resources are of broad scope.

Lacoste vs. Department of Conservation, 263 U. S. 545; 68 L. Ed., 437, holds on page 552:

> **"Protection of the wild life of the State is peculiarly within the police power; and the State has great latitude in determining what means are appropriate for its protection."**

It is primarily submitted that no distinction whatever is made in the statutes under consideration between individuals and corporations; they are on a parity as a mere reading of the acts will show. The takers of shrimp and oysters, whether natural persons or corporations, are treated alike, and this disposes of part of appellants' contention in this regard.

None of the cases cited by appellants in their brief on this subject involves a consideration of means adopted by a State to protect its wild life or affecting public property, and these cases, are, we submit, not persuasive on the question of the validity *vel non* of the regulations here involved.

There are very different principles involved in the instant cases.

This Court has held to be constitutional, statutes excluding from employment on public works any but citizens of the State; limiting the hours of labor on public works, and the like.

Atkin vs. Kansas, 191 U. S., 207; 48 L. Ed., 148.

> "The freedom to contract guaranteed by U. S. Const. 14th Amend. is not infringed by the provisions of Kan. Gen. Stat. 1901, Secs. 3827-3829, making it a criminal offense for a contractor for a public work to permit or require an employee to perform labor upon that work in excess of eight hours each day.
>
> "The equal protection of the laws is not denied to a contractor for a public work or his employees by the provisions of Kan. Gen. Stat. 1901, Secs. 3827-3829, making it a criminal offense for such contractor to permit or require an employee to perform labor upon the work in excess of eight hours each day."

Heim vs. McCall, 239 U. S. 175; 60 L. Ed., 206.

> "Privileges and immunities of the citizens of the several states are not abridged, contrary to U. S. Const. Art. 4, Sec. 2, by the provisions of N. Y. Consol. Laws, Chap. 31, Sec. 14, that only citizens of the United States may be employed in the construction of public works by or for the state or a municipality, and that in such employment citizens of New York state must be given preference."

The reason for these decisions is that such legislation deals with the sovereign state in relation to the common property of its citizens, to which the 14th Amendment is inapplicable; the discretion of the State and the reasonableness of the provisions will not be inquired into.

We have, in the instant cases, to deal with legislation by the State providing the conditions under which it will permit the public, common property—wild life—to be reduced to possession and to become private property which may then become an article of commerce.

If the 14th Amendment applies at all to such legislation, we submit that the State is permitted wide discretionary latitude and its police power extensive scope in determining what means are appropriate for its dealing with its public property—wild life.

Lacoste vs. Department of Conservation 263 U. S., 545; 68 L. Ed., 437.

"The 14th Amendment does not require equality of taxation within the state, or prevent the laying of special or additional taxes upon defined classes of property, so long as the inequality is not based upon arbitrary distinctions. It does not prohibit state legislation imposing a severance tax upon such skins and hides, even if no similar or corresponding tax is levied upon other property of merchants. St. Louis Southwestern R. Co. vs. Arkansas, 235 U. S. 367, 59 L. ed. 273, 35 Sup. Ct. Rep. 99, and cases cited: Singer Sewing Mach. Co. vs. Brickell, 233 U. S. 304, 315, 58 L. ed. 974, 979, 34 Sup. Ct. Rep. 493; Southwestern Oil Co. vs. Texas, 217 U. S. 114, 121, 54 L. ed. 688, 692, 30 Sup. Ct. Rep. 496; Cook vs. Marshall County, 196 U. S. 261, 274, 49 L. ed. 471, 476, 25 Sup. Ct. Rep. 233. **Wild animals permitted by the state to be taken and reduced to possession on prescribed conditions may reasonably be distinguished from other classes of property.** * * *

"The 14th Amendment does not interfere with the proper exercise of the police power. * * *

"Protection of the wild life of the state is peculiarly within the police power, and the state has great latitude in determining what means are appropriate for its protection."

It is now submitted that the classification of the shrimp and oyster laws here under consideration is reasonable in effect and sound in principle, and constitutional.

The acts are conservation measures, designed and intended to preserve, conserve and protect the natural resources of Louisiana in its fisheries.

It is provided in the Shrimp act in Section 4 (Record p. 23), that the right to take shrimp shall be confined to those

equipped to convert such shrimp into food products and articles of value.

Section 5 of the Shrimp Act, last sentence of the section provides (Record p. 24):

> "It is not intended by the provisions of this Act to interfere with the fishermen securing shrimp for bait; or for home consumption or the local markets in their fresh state, **provided they are taken from the outside waters of the State;** and provided further that shrimp for bait may be secured from either the inside or outside waters of the State at any time."

The oyster act, Act 258 of 1926, in Section 2 grants a permit to take oysters to such Louisiana persons, including firms and corporations, as have a factory or shucking plant or place of business located in Louisiana, but does not confine the right to take oysters to such persons, for the following sentence of said Section 2 provides:

> "No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, etc."

and there is no provision that *only* persons, firms, or corporations possessing factories, shucking plants or places of business in Louisiana shall be permitted to take oysters.

It will thus be seen that the intent is to assure to the State that the persons, firms or corporations which it permits to take shrimp for commercial purposes in large quantities are possessed of such equipment as will reasonably prevent possible loss and waste of this valuable natural resource. If **persons not thus equipped be permitted to take large quantities of shrimp, they may find no factory or drying platform willing or able to take and use such shrimp, and the shrimp, being a highly perishable article, will quickly spoil and be a total loss.**

We urge that the same argument would apply even without the provisions of Section 5 of the shrimp act.

It is further submitted that the contention of unjust discrimination does not apply in the case of the oyster law, because:

(1) The act in Section 2 grants a permit to take oysters to any Louisiana person, including corporations, *having a place of business in the State*, which certainly discriminates against no class of persons.

(2) The Act does not even limit the right to take oysters to such persons as have a place of business in Louisiana.

It is further submitted that even if the oyster law did, or is construed to, limit the taking of oysters to such class of Louisiana persons as have adequate facilities for preventing the wasting of such oysters by spoiling, then the same reasons as outlined *supra* in the case of shrimp would be of equal force and applicability.

V and VI

A statute prohibiting oysters and shrimp from being exported from the state until the hulls and shells have been removed is not unconstitutional as a regulation of interstate commerce: and the question is not affected by the fact that it is contemplated that such shelled oysters and shrimp as well as the hulls and shells will ultimately move in interstate commerce.

Appellants contend that Sections 13 and 19 of the shrimp act, and Sections 3, 23 and 24 of the oyster act violate paragraph 3, subdivision VIII, Article I of the federal Constitution conferring upon Congress the exclusive power to regulate interstate commerce.

The sections of these acts in question provide:

Shrimp Act.

"Section 13. All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

"In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State, or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the state in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limit of the State, without restriction or reservation.

"It shall be the duty of all licensees operating under the Department of Conservation in the shrimp industry in this state to conserve for fertilizer purposes all shells or hulls and heads of salt water shrimp and to report monthly, on blanks to be furnished by the Department of Conservation, the quantity thereof on hand, to the Department of Conservation. It shall be unlawful to ex-

port from the State of Louisiana any raw shells or hulls and heads of salt water shrimp as they are required to be manufactured into fertilizer or used for an element in chicken feed. When the shrimp hulls or shells and heads shall have been conserved for the purposes herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof. Any person, firm or corporation violating the provisions of this section shall be liable to the penalties hereinafter imposed."

Section 19 provides punishment for violation of the Act and forfeiture of the vessel illegally transporting shrimp from the State.

Oyster Act.

Section 3. That it shall be unlawful for any person, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources, necessary for use as cultch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. Any surplus of raw oyster shells beyond the foregoing requirements may be used for road building purposes, or ground for use as chicken feed or fertilizer, or any other purposes of material benefit to the State or to its citizens. In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product it shall be lawful to ship in the shell oysters from any point in the State of Louisiana to any other point in the State of Louisiana for consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State, who shall lawfully take any oysters from any of the waters of this State, or lawfully acquire the same, shall have a qualified interest or property in the oysters so taken in the shells, which qualified interest may be

sold or transferred to any other person, firm or corporation within the limits of the State of Louisiana; and after said oysters shall have been removed from the shell within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said oysters and shall have the right to sell such oysters or ship the same beyond the limits of the State, without restriction or reservation, and when the raw oyster shells herein described shall have been used for the purposes herein stated the right of property therein theretofore existing in the State shall pass to the lawful taker or then possessor of such oyster shells.

"In case of any infringement of the aforesaid qualified interests in the taker or possessor of oysters in the shell, said taker or possessor may, in his own name, maintain his action against the wrongdoer, as may be proper; and in case of larceny or other public offense concerning such oysters while in the hands of a lawful taker or possessor, or upon bedding grounds held by a lawful lessee, the ownership thereof shall be averred in such lessee, taker or possessor, when by law it is necessary to aver ownership. Any person, firm, association or corporation violating any of the provisions of this section shall be liable to the penalties hereinafter provided."

Sections 23 and 24 provide punishment for violation of the act and forfeiture of the vessel illegally transporting oysters from the state.

It will be noted that Section 13 of the Shrimp Act and Section 3 of the Oyster Act respectively declare the state's sovereign ownership and control over shrimp and oysters and the hulls and shells thereof, which the sections declare are valuable as natural resources,—that the shrimp heads and hulls are valuable as a fertilizer and an element in chicken feed, and the oyster shells, as cultch, as road building material and as chicken feed.

The Sections respectively grant to the lawful takers of shrimp and oysters a qualified interest or ownership only, so long as the head, hulls and shells have not been removed; and make it unlawful to ship such unshelled shrimp and oysters from the State of Louisiana.

Section 13 of the Shrimp Act provides that when the heads and hulls have been removed from the shrimp, the meat portion popularly called "tail-meat" vests absolutely in the lawful taker or possessor, and may be shipped without restriction or reservation.

Section 3 of the oyster act likewise provides that when the shells have been removed, the oysters vest absolutely in the lawful taker or possessor, and may be shipped without restriction or reservation.

These sections further provide that until the shells and hulls of the oyster and shrimp have been conserved and made into fertilizer, or chicken feed, or used for road building or similar purpose, the possessor may not send them out of the State; but that when so conserved, the "right of property therein theretofore existing in the State shall pass to the lawful taker or possessor thereof."

It is submitted that there is no unconstitutional interference with or regulation of interstate commerce disclosed.

The Commerce clause does not contemplate the fisheries within a state. The Louisiana statutes are not aimed at commerce. They contemplate the industry as distinguished from the commerce that arises out of or rather is part of the fisheries. The plain purpose of the Acts is to conserve to the citizens of Louisiana, as owners of the fisheries, the benefit of that property. The sale of shrimp and oy-

sters may be either in the raw state or in a packed or canned state. It is for the State as trustee for the people to say whether or not the shrimp and oysters may be put in commerce at all, or to what extent and under what terms title thereto may pass to buyers in its market. The power of Congress does not come into play until they are susceptible of barter, sale or exchange in commerce.

Geer vs. Connecticut, 161 U. S., 519; 40 L. ed., 793.

"The sole consequence of the provision forbidding the transportation of game killed within the state, beyond the state, is to confine the use of such game to those who own it, the people of that state. The proposition that the state may not forbid carrying it beyond her limits involves, therefore, the contention that a state cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other states to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the state has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of state commerce, as a resulting necessity such property has become the subject of interstate commerce, hence controlled by the provisions of U. S. Const. art. 1, Sec. 8. **But the errors which this argument involves are manifest It presupposes that where the killing of game and its sale within the state are allowed, it thereby becomes commerce in the legal meaning of that word. In view of the authority of the state to affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the state, it may well be doubted whether commerce is created by an authority given by a state to reduce game within its borders to possession, provided such**

game be not taken, when killed, without the jurisdiction of the state. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the state necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the state, under the provision in question, created internal state commerce, it does not follow that such internal commerce became necessarily the subject matter of interstate commerce and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and interstate commerce is marked, and has always been recognized by this court. * * *

"The fact that internal commerce may be distinct from interstate commerce destroys the whole theory upon which the argument of the plaintiff in error proceeds. **The power of the state to control the killing of and ownership in game being admitted, the commerce in game, which the state law permitted was necessarily only internal commerce since the restriction that it should not become the subject of external commerce went along with the grant and was a part of it. All ownership in game killed within the state came under this condition, which the state had the lawful authority to impose, and no contracts made in relation to such property were exempt from the law of the state consenting that such contracts be made, provided only they were confined to internal and did not extend to external commerce."**

The State of Louisiana in these Acts in effect says: I am the sovereign owner for the benefit of my people of salt water shrimp and oysters, their hulls and shells. When they are caught or taken as I prescribe, the taker acquires from me a limited and qualified ownership—he may not ship them beyond the limits of the State until he hulls and shells them, and then and in that event he becomes the absolute owner of them, they become articles of commerce and can, of course, be shipped anywhere without restriction or reservation. As to the hulls and shells of these shrimp and oysters, I grant you the right to remove them from the fish, and as they are a valuable asset, I require, as a condition precedent to ownership, that you make fertilizer or chicken food of them or use them for cultch or road building purposes, and not until then do I part with my title. When you have so conserved these hulls and shells you become owner of them, they become the subject of commerce and can, of course, be shipped anywhere.

This Court in the case of *Geer vs. Connecticut, supra*, declares that the State being a sovereign owner can do this very thing; that public things, such as wild life, form no part of interstate commerce, and never do until all conditions precedent imposed by the sovereign have been compiled with.

Lacoste vs. Department of Conservation, 263 U. S., 545 (68 L. Ed., 437).

This Court in 1924, again passed on the constitutionality of a wild life conservation statute, in which the State of Louisiana made the payment of a severance tax a condition precedent to the divestiture of the State's sovereign title in the skins of certain wild game. The Court said:

"The legislation is a valid exertion of the police

power of the state to conserve and protect wild life for the common benefit. **It is within the power of the state to impose the exaction as a condition precedent to the divestiture of its title and to the acquisition of private ownership.** Expressly, the tax is imposed upon all skins and hides taken within the state. This includes those, if any, sold for manufacture in the state as well those shipped out. **In their argument here, plaintiffs in error stated that skins and hides are not manufactured into finished products in Louisiana, and that all are shipped out of the state. But that is no objection to the tax. The state's power to tax property is not destroyed by the fact that it is intended for and will move in interstate commerce.** Such skins and hides may be taxed while in the hands of dealers before they move in interstate commerce. Coe vs. Errol, 116 U. S. 517, 525, 29 L. ed. 715, 718, 6 Sup. Ct. Rep. 475; Bacon vs. Illinois, 227 U. S. 504, 515, 516, 57 L. ed. 615, 620, 33 Sup. Ct. Rep. 299; Arkadelphia Mill. Co. vs. St. Louis Southwestern R. Co., 249 U. S. 134, 151, 63 L. ed. 517, 527, P.U.R. 1919C, 710, 39 Sup. Ct. Rep. 237. Failure to levy and enforce the tax before the skins and hides reach the dealers does not make the necessary operation and effect of the law an interference with interstate commerce. The imposition of the tax on the skins and hides while in the hands of the dealers is calculated to make certain that all will be found for taxation. No interference with interstate commerce results from the enforcement of the act. It is not repugnant to the commerce clause of the Constitution."

It will be noted that in the case of Lacoste, this Court expressed the opinion that the tax on furs and hides was imposed before the articles became subjects of commerce, and that the fact that the hides are not manufactured into finished products in the state and that all are shipped out of the state did not destroy the state's right to tax, because:

> "The state's right to tax property is not destroyed by the fact that it is intended for and will move in interstate commerce."

The identical regulations here involved were held constitutional in a well reasoned and very widely approved case by the Supreme Court of Alabama in 1892, and while not binding upon this Court, is highly persuasive.

State of Alabama vs. Harrub, 95 Ala., 176; 15 L. R. A. 761.

In this case the Supreme Court of Alabama held:

> **"If the state has the power to prohibit the exportation of its oysters absolutely, a fortiori, it may limit the shipment of such oysters to such as may have been shelled. If the Legislature sees proper, as a means to prevent the exhaustion of its oyster-beds, to grant to the takers, who can only be resident citizens of the state, or their grantees within the state, such a qualified property right in the oyster as will permit its exportation only after it is shelled, where is the authority to judicially control this discretion, or what principle of the Interstate Commerce Law is violated by such an enactment? The oyster is the absolute property of the state. It certainly has the power to prevent its becoming an article of interstate commerce. Until it becomes an article of interstate commerce Congress has no authority or control in the premises. The state, by the statute itself, expressly retains the title to the oyster, and prohibits its shipment beyond the state until shelled. Only after it is shelled does the state relinquish its title, and the grantee previously having but a qualified interest, becomes the absolute owner, and the oyster may then become an article of interstate commerce. When shelled, and the state has parted with its property rights, the state no longer interferes with the article. The owner ships it wherever he pleases and by whatsoever transportation he prefers."**

The basic reasoning supporting all of these decisions, and

which is conclusive, we submit, of the present question, is that the states may properly regulate their internal commerce, and that the constitutional inhibition of state regulation of interstate commerce does not apply to regulations of the states touching articles before they become the subject of such interstate commerce, even though it be contemplated that they will eventually so move; and that the state being the sovereign proprietor of the wild life within its borders, such wild life does not and cannot become the subject of interstate commerce until and unless each condition precedent prescribed by the State for the transfer to private ownership of the state's title has been complied with, and that until the state has thus parted with its title, it may regulate and control, in its discretion, and even forbid the game to move in interstate commerce.

The Ferrandau Case.

Appellants have indicated in brief that the Supreme Court of Louisiana has declared in the case of State of Louisiana vs. Ferrandau, 130 La., 1035; 58 So., 870, that these statutes are unconstitutional. **That case has not the remotest bearing upon the matters here under consideration.**

In the *Ferrandau* case, the Court had under consideration Sec. 1 of Act 189 of 1910 of Louisiana which provided:

> "No person, firm or corporation shall ship oysters out of this State *for canning or packing out of the State.*"

Such a provision is clearly a regulation of interstate commerce, because the statute permitted oysters to be shipped in interstate commerce for all other purposes except canning or packing.

The statute of 1910 had as clear an interference with interstate commerce as the Act of Mississippi providing (Record 768, p. 122):

> "It shall be unlawful for any person to take oysters in the shell out of the State of Mississippi by means of any transportation, *except that oysters in the shell may be shipped out of the state by express.*"

It is submitted, on the other hand, that the statutes of 1926 under consideration in these appeals do not so affect interstate commerce.

There is no discrimination; no shipment out of the state for any purpose is permitted until the conditions precedent to the surrender of the state's proprietary rights are fulfilled; then shipment may be made for all purposes.

Oil and Gas Cases.

Reference is made in appellants' brief to certain cases where this Court held unconstitutional, as interfering with interstate commerce, state statutes designed to conserve natural gas and oil.

These cases are not in point, because it is clear that oil and gas immediately upon reduction to possession, belong to the owner of the soil from which the oil or gas was obtained; whereas wild life, fish, and oysters belong to the state as proprietor in trust for all its citizens, and can be reduced to private ownership only in the manner permitted by the state.

Administration of the Shrimp and Oyster Laws.

It is charged by the Appellants that the State of Louisiana is knowingly permitting shrimp and oysters to be shipped out of the state for every purpose except packing; and that, there-

fore, as administered, the statutes under consideration are in effect an interference with interstate commerce.

It is submitted that there is no basis in fact for such contention, and this subject will be discussed in a later section of this brief, under point VIII.

Fines, Penalties and Forfeiture.

Appellants further contend that Section 19 of the shrimp law and Sections 23 and 24 of the oyster law interfere with interstate commerce.

As we have seen, these sections provide the penalties for violations of these statutes, among which penalties is that of forfeiture, after due proceedings, of the vessel illegally transporting oysters and shrimp beyond the state.

Appellants do not seem to have referred to this point after stating it, and we take it that these being the penal sections of the acts, the sections are alleged to be an interference with interstate commerce for the same reasons urged by appellants as to Sections 13 and 3 respectively, of the shrimp and oyster laws.

The penalties are not unusual, and forfeiture of the offending vessel, after hearing, is not in itself unconstitutional, as has been held by this Court.

In **Smith vs. Maryland**, 59 U. S.; 18 How. 71; 15 L. Ed., 269, it was held:

> "It is within the legislative power of the state to interrupt the voyage and inflict the forfeiture of a vessel enrolled and licensed under the laws of the United States, for disobedience, by those on board, of such law."

This Court in **Lacoste vs. Department of Conservation** (263 U. S., 545; 68 L. Ed., 437), maintained the constitution-

ality of a state statute providing forfeiture as a penalty.

This Court has held that a state statute is constitutional which provides for destruction of fish nets used in violation of law where they are of small value without even forfeiture proceedings being instituted.

See *Lawton vs. Steele*, 152 U. S. 133; 38 L. Ed. 385.

Value of Hulls and Shells.

It is contended by appellants that the heads and hulls of shrimp and the shells of oysters are not valuable natural resources, and that the retention by the State of Louisiana of their ownership is a subterfuge.

It is submitted that the record fails to bear out this contention.

In the statement of facts in the forepart of this brief we have made liberal reference to the records, which establish the great importance and value of these by-products of shrimp and oysters as a natural resource for fertilizer and feed purposes on the one hand and as cultch, road building material and the like on the other.

We have reproduced in an appendix to this brief nine views of a shrimp-hull drying plant which are exhibits to the affidavit of Stanley Arthur of the Department of Conservation (Record No. 768, pp. 117, 118), which indicate that shrimp hull drying is important.

There is no subterfuge; there is a valid protection under the police power of valuable natural resources.

It is submitted, therefore, that the Louisiana Statutes under consideration are not violative of the commerce clause of the Constitution.

VII

The asserted right to take and deal with natural reef oysters and salt water shrimp and to contract with relation thereto, without reference to a state law regulating the reduction of such wild life to private ownership, is not a property right, and is not protected by the 14th Amendment to the United States Constituion.

Appellants contend that the oyster and shrimp laws are unconstitutional as depriving them of property, that is, the right to contract, without due process of law.

It is submitted that in order to assert that a statute deprives one of property without due process, one must necessarily disclose the property right claimed to be invaded, in this instance, the right to contract.

Appellants attempt to meet this issue by claiming a right to contract to take shrimp and oysters from Louisiana waters and to deliver them in Mississippi. The Louisiana statutes forbid this until the hulls and shells have been first removed; and appellants contend that they are thus deprived of their right to freedom of contract.

It is submitted that one has no right to contract with relation to property which is public or over which a state exercises sovereign proprietorship, except in the manner and to the extent permitted by such state.

New Orleans vs. Water Works Co., 142 U. S. 79; 35 L. Ed. 943, 946.

In this case at page 946 Lawyers' Edition the Court held:

> "We think that before we can be asked to determine whether a statute has impaired the obligation of a contract, it should appear that there was a legal contract

subject to impairment, and some ground to believe that it has been impaired; and that to constitute a violation of the provision against depriving any person of his property without due process of law, it should appear that such person has a property in a particular thing of which he is alleged to have been deprived."

Barbier vs. Connolly, 113 U. S. 27; 28 L. Ed. 923, 924.

The Court in this case said:

"The 14th Amendment, in declaring that no State 'Shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoiliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

Lacoste vs. Department of Conservation, 263 U. S., 545; 63 L. ed., 437.

In this case it was urged that the statute deprived the plaintiffs in error of property without due process. The Court held the plea to be without merit, holding:

> "Wild animals permitted by the state to be taken and reduced to possession on prescribed conditions may reasonably be distinguished from other classes of property."
>
> "The act is not repugnant to the due process or equal protection clauses of the 14th Amendment."

This Court has held to be constitutional, statutes excluding from employment on public works any but citizens of the State; limiting the hours of labor on public works, and the like; see Atkin vs. Kansas, 191 U. S., 207; 48 L. Ed., 148; Heim vs. McCall, 239 U. S. 175; 60 L. Ed., 206.

The reason for these decisions is that such legislation deals with the sovereign state in relation to the common property of its citizens, to which the 14th Amendment is inapplicable; the discretion of the State and the reasonableness of the provisions will not be inquired into.

This particular matter appears to us as elemental. It is undeniable that the State, as sovereign, owns for the benefit of its people all of the wild life within its borders, and can limit and condition the reduction thereof to private ownership. This has been argued at length with citation of appropriate authorities.

It seems equally apparent and almost axiomatic that until reduced to private ownership in the manner provided by the state, no one can possess contract rights with respect thereto which do not recognize the conditions precedent to reduction to private ownership.

Were this not so, the principle of state proprietorship in wild game would be meaningless, because, for instance, in order to evade a law of Connecticut prohibiting exportation of game birds, Mr. Geer need only have contracted with a citizen of Massachusetts to furnish him with a certain number of game birds killed in Connecticut.

Private citizens cannot contract to sell or deal in public property.

VIII

Proof of violations of a prohibitory law does not even tend to show the unconstitutionality of that law as a denial of equal protection of the law, or that the state should be enjoined from enforcing such statute.

Appellants would have the Court believe that the records show that the shrimp and oyster laws in question are so administered that they become unconstitutionally discriminatory, in that Louisiana citizens are permitted to violate the acts and to ship in interstate commerce oysters in the shells and shrimp with heads and hulls.

The records do not support the contention.

The affidavit of Percy Viosca, Director of Fisheries for Louisiana, is particularly illuminative on this subject. We have liberally quoted from it in our statement of facts in this brief and it will be found in Record 768, pages 39 to 53.

On the subject of the enforcement of that part of the shrimp act which prohibits the shipping of whole shrimp out of Louisiana, this witness states (Record 768, pp. 40, 41):

> "Affiant avers that as the head of the Fisheries Division of the Conservation Department he is prepared to state of his own knowledge that there is no evidence in

possession of the Department of Conservation coming through its agents, or otherwise, which indicates that the shipments of shrimp procured from the waters of the State of Louisiana have been shipped outside of the State without first removing the heads and hulls therefrom and especially since Act 103 of 1926 became effective.

"Affiant avers that the aforesaid Act 103 of 1926 does not relate to the head and hulls of shrimp caught outside of the waters of the State of Louisiana, nor beyond the three mile limit in the Gulf of Mexico; that the Conservation Department has no jurisdiction over shrimp caught in the Gulf of Mexico outside of the three mile limit, and such shrimp as may have been shipped from the State of Louisiana since the adoption of the Act 103 of 1926, so far as affiant knows, and so far as the records of the Department of Conservation show, have been only of such shrimp as have been caught beyond the limits of the State of Louisiana and these are not the character of shrimp contemplated by the provisions of the aforesaid Act 103 of 1926.

"Affiant knows of his own knowledge that large quantities of shrimp are caught in the waters outside of the State of Louisiana at all seasons of the year, but that these shrimp are not within the jurisdiction of the Conservation Department.

"Affiant knows of his own personal knowledge that there have been no salt water shrimp caught in the waters of Louisiana since the adoption of the aforesaid Act 103 of 1926 and shipped beyond the limits of the State of Louisiana, unless they have been so caught and so shipped in a surreptitious and illegal manner, despite the vigilant activity of the agents of the Conservation Department to detect all violators of the law; that no such shrimp is being caught and shipped to the knowledge of anyone connected with the Fisheries Division of the Department of Conservation, nor have any such shipments been permitted on appeals, affidavits or otherwise, to the knowledge of the Fisheries Division of the Department of Conservation of Louisiana."

The oyster law is enforced with equal impartiality.

Dr. V. K. Irion, Commissioner of Conservation for Louisiana, states (Record No. 769, p. 87):

> "I am advised that there have been filed in connectionwith the bill of Complaint in this matter affidavits to the effect that to my knowledge oysters in the shell are permitted to be exported from the State of Louisiana. This assertion of fact is not true. I do not deny that there may be some bootlegging in raw oysters as bootlegging is done in other articles. I have endeavored and am continuing to endeavor, through all of my officers, to impartially enforce the oyster law of the State of Louisiana, and none of my officers nor do I knowingly permit any violations of the conservation laws of Louisiana."

James N. McConnell, Director of the Oyster Division of the Louisiana Department of Conservation, testified (Record No. 769, p. 88):

> "The Conservation Department of Louisiana is prepared to enforce this Louisiana law and has been enforcing it against everyone until restrained in this case by the Court order."

It is submitted that no discrimination in the enforcement of these laws has been established, nor have the laws been knowingly permitted to be violated.

Only shrimp from which the heads and hulls have been removed and shelled oysters are permitted to be shipped out of the State; except shrimp caught outside of the three mile limit, over which Louisiana can exercise no such ownership and control as is provided in the statutes under consideration.

Our proof of these facts is convincing, and is set out in the statement of facts in this brief.

It may be true that oysters and shrimp are surreptitiously shipped and "bootlegged" out of the state in violation of the statutes; but this is done despite the effort of the authorities and without their knowledge, and is not cause to arrest the enforcement of the statutes.

To adhere to such a doctrine as appellants here stand for would be preposterous we earnestly submit. Is the Volstead Act to be enjoined because it is violated in innumerable ways by various persons?

Are state laws on gambling and kindred subjects to be held unconstitutional as violative of the 14th Amendment, because one can point out specific instances of gambling being conducted?

We submit that such is not and cannot be the law.

The leading case cited by appellants on the subject of the unconstitutionality of a statute due to knowing and willful enforcement against some persons and not against others is

Yick Wo vs. Hopkins, 118 U. S. 356; 30 L. Ed. 220.

In that case it was said at page 227:

> "Though the law itself be fair on its face and impartial in appearance, **yet if it is applied and administered by public authority with an evil eye and an unequal hand,** so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. * * *
>
> "The present cases, as shown by the facts disclosed in the record, are within this class. It appears that both petitioners have complied with every requisite, deemed by the law or by the public officers charged with its administration necessary for the protection of neighboring property from fire, or as a precaution against injury to

> the public health. No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner their harmless and useful occupation, on which they depend for a livelihood. And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happened to be Chinese subjects, eighty others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationalty to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution."

It is submitted that the discrimination in the enforcement of the statute must be willful and knowing; that good faith of the state officials will be presumed unless the contrary is clearly shown; that bad faith and willful and unfair discrimination is not established in this case by a mere disclosure of instances where shrimp and oysters have been shipped in violation of the statutes.

This Court held in 1919 in the case of

Mackay vs. Little Rock, 250 U. S., 94; 63 L. Ed., 863, 869:

> **"There was no offer to show an arbitrary and intentionally unfair discrimination in the administration of the ordinance, as in Yick Wo vs. Hopkins, 118 U. S. 356, 374."**

and this Court refused to hold the ordinance unconstitutional.

It is submitted that there are no cases establishing a different doctrine.

IX.

The grant to a corporation of a charter does not exempt it from the operation of the police power of the State, nor preclude the state from enacting laws reasonably regulating the corporation's powers, the use of its property and the conduct of its business as the public good may require.

Appellants, in a desperate attempt to find some unconstitutionality in the statutes here being considered, assert that their charters which are founded upon general laws of Louisiana are a contract between the state and the appellants whereby they have the right to export oysters.

These charters are to be found in the records, page 22 of Number 769 and page 109 of Number 768.

It will be noted that the charter of Foster, Fountain Company, Inc., gives to that corporation no right whatever which it cannot now enjoy and exercise under the shrimp and oyster laws.

The Sea Food Company is chartered to conduct the business of canning oysters and shrimp and the operation of boats to catch the same, and to import and export said articles.

It is submitted that the shrimp and oyster laws do not prevent the Sea Food Company from exercising these rights. **The acts regulate the exercise** of these rights, and, we suggest, with absolute constitutionality.

Texas & N. O. R. R. Co. vs. Miller, 221 U. S. 408; 55 L. Ed., 789, 795.

In this case, it appears that the Louisiana legislature by special statute of 1878 chartered the defendant railroad, one provision of which statute exempted said company from

liability for death of any employee even negligently caused. A subsequent statute destroyed this exemption.

The Court said on page 795 of the Lawyers' Edition:

> "The doctrine that a corporate charter is a contract which the Constitution of the United States protects against impairment by subsequent state legislation is ever limited in the area of its operation by the equally well-settled principle that a legislature can neither bargain away the police power nor in any wise withdraw from its successors the power to take appropriate measures to guard the safety, health, and morals of all who may be within their jurisdiction. Boston Beer Co. vs. Massachusetts, 97 U. S. 25, 24 L. ed. 989; Northwestern Fertilizing Co. vs. Hyde Park, 97 U. S. 659, 24 L. ed. 1036; Stone vs. Mississippi, 101 U. S. 814, 25 L. ed. 1079; Douglas vs. Kentucky, 168 U. S. 488, 42 L. ed. 553, 18 Sup. Ct. Rep. 199. In the first of these cases it was said:
>
> **" 'Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals. The legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, *Salus populi suprema lex*; and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself.'**
>
> "The fact that the provision in question was embodied in the statute incorporating the Louisiana company does not suffice to show that it became a part of the charter contract, for obviously nothing became a part of that contract that was not within the contracting power of the legislature. Such of the provisions of the statute as were

within that power became both a law and a contract and were within the protection of the contract clause of the Constitution, but such of them as were not within that power became a law only, and were as much subject to amendment or repeal as if they had been embodied in a separate enactment. As was said by this court in Stone vs. Mississippi, *supra*: 'It is to be kept in mind that it is not the charter which is protected, but only any contract the charter may contain.'

"The subject to which the provision in question relates is the civil liability of a railroad company for the death of its employees, resulting from its negligence. That is a matter of public concern, and not of mere private right. It is closely connected with the safety of the employees, and undoubtedly belongs to that class of subjects over which the legislature possesses a regulatory but not a contracting power. Manifestly, therefore, the charter contract did not embrace that provision and the contract clause of the Constitution did not prevent its repeal."

Probably the most exhaustive case by this Court upon this subject is **Butchers' Union Slaughterhouse vs. Crescent City Live Stock, Etc.**, 111 U. S. 746; 28 L. Ed., 585.

In that case, it is said on page 586:

"No one can examine the provisions of the Act of 1869, with the knowledge that they were accepted by the Crescent City Company, and so far acted on that a very large amount of money was expended in a vast slaughter-house and an equally extensive stock-yard and landing place, and hesitate to pronounce that in form they have all the elements of a contract on sufficient consideration.

"It admits of as little doubt that the ordinance of the City of New Orleans, under the new Constitution, impaired the supposed obligation imposed by those provisions of the State, by taking away the exclusive right of the Company granted to it for twenty-five years, which was to the Company the most valuable thing supposed to

be secured to it by the statutory contract.

"We do not think it necessary to spend time in demonstrating either of these propositions. We do not believe they will be controverted.

"The appellant, however, insists that, so far as the Act of 1869 partakes of the nature of an irrepealable contract, the Legislature exceeded its authority and it had no power to tie the hands of the Legislature in the future from legislating on that subject without being bound by the terms of the statute then enacted. This proposition presents the real point in the case.

"Let us see clearly what it is:

"It does not deny the power of that Legislature to create a corporation, with power to do the business of landing live stock and providing a place for slaughtering them in the city. It does not deny the power to locate the place where this shall be done exclusively. It does not deny even the power to give an exclusive right, for the time being to particular persons or to a corporation to provide this stock landing and to establish this slaughter-house.

"But it does deny the power of that Legislature to continue this right, so that no future Legislature nor even the same body can repeal or modify it or grant similar privileges to others. It concedes that such a law, so long as it remains on the statute-book as the latest expression of the legislative will, is a valid law and must be obeyed, which is all that was decided by this court in the *Slaughter-House Cases*. **But it asserts the right of the Legislature to repeal such a statute or to make a new one inconsistent with it, whenever, in the wisdom of such Legislature, it is for the good of the public it should be done.**

"Nor does this proposition contravene the established principle that the legislature of a State may make contracts on many subjects, which will bind it and will bind succeeding Legislatures for the time the contract has to run, so that its provisions can neither be repealed nor its

obligation impaired. The examples are numerous where this has been done and the contract upheld.

> **"The denial of this power, in the present instance, rests upon the ground that the power of the Legislature intended to be suspended is one so indispensable to the public welfare that it cannot be bargained away by contract. It is that well known but undefined power called the 'police power.'**

In Stone vs. Mississippi, 101 U. S. 814; 25 L. Ed. 1079; the whole subject is reviewed in the opinion. That was a case of a chartered lottery, whose charter was repealed by a Constitution of the State subsequently adopted. The lottery company asserted the impairment of its charter contract rights, and this Court said:

> "The question is, therefore, presented whether, in view of these facts, the Legislature of a State can, by the charter of a lottery company, defeat the will of the people authoritatively expressed, in relation to the further continuance of such business in their midst. We think it cannot. No Legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. For this purpose, the legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself."

It is submitted that the statutes here are police regulations designed to protect wild life and to conserve natural resources; that no substantial rights are impaired; that even if impaired, the acts are constitutional as valid exercise of the inherent and unbarterable police power.

Furthermore, the Constitution of Louisiana of 1898 and 1913, Article 263, in effect at and prior to the incorporation

of Sea Food Company, June 27, 1913, and of Foster Fountain Co., Inc., on February 24, 1921, provided:

> **"The exercise of the police power of the State shall never be abridged nor so construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general welfare of the State."**

This constituted an inclusion in the charters themselves of a reservation by the State of Louisiana to modify the charters under its police power—a right necessarily reserved, of course, but thus affirmatively expressed.

Miller vs. New York, 82 U. S.; 15 Wall. 478; 21 L. Ed., 98.

> "The power to alter, modify or repeal an Act of incorporation, may be reserved to the State by a general law applicable to all Acts of incorporation in which case the power may be exercised whenever the charter was granted subsequently to the passage of the general law.
>
> "Where such a provision is incorporated in the charter it qualifies the grant, and the subsequent exercise of that reserved power is not an act within the prohibition of the Constitution.
>
> **"The reservation is equally valid and effectual if it exists in the Constitution of the State, or in a prior general law."**

CONCLUSION

In conclusion, we would express the thought that the shrimp and oyster laws under consideration were enacted, not as a blow aimed at the State of Mississippi and its canning industries, maintained as they have been for so long a time at the expense of the natural wealth of Louisiana; but these laws were enacted by a sovereign state conscious of its responsibility to its citizens to maintain and preserve for them and their posterity natural resources in wild life,

which might otherwise be depleted, exhausted and destroyed, as happened in the case of Maryland.

Louisiana has only the most fraternal feelings for Mississippi and its people, as is evidenced by the concluding section of each of the statutes in question granting a season within which adjustments might be made to meet the conditions imposed by the Acts—a concession, let it be stated, made during the confection of these laws to these same appellants, as the records show.

Friendly and kindly as are these feelings, however, Louisiana cannot forego the exercise of her police power in securing the welfare of her citizens and the preservation to them of their birth right.

It is respectfully submitted that the decrees should be affirmed.

JOHN DYMOND, JR.,

A. GIFFEN LEVY,

Special Attorneys for the Department of Conservation of Louisiana.

DYMOND & LEVY,
of Counsel.

APPENDIX

We reproduce herewith the affidavit of Stanley Arthur, Director of the Division of Wild Life of the Department of Conservation of Louisiana, with the photographs made exhibits thereto, the same having been sent up in original and therefore not being printed in the Record.

AFFIDAVIT OF STANLEY C. ARTHUR ON BEHALF OF DEFENDANTS

STATE OF LOUISIANA,
PARISH OF ORLEANS:

Before me, the undersigned authority, personally came and appeared Stanley C. Arthur, who being by me sworn, deposes and says:

That he is the Director of the Division of Wild Life of the Department of Conservation of the State of Louisiana; that having been directed by the Commissioner of Conservation to take certain pictures of a shrimp hulling and drying plant, to be used in the aforesaid litigation, he did proceed to the plant of the Dunbar-Dukate Co., Inc., at Westwego, Jefferson Parish, Louisiana, and he there took nine pictures of different views of the machinery and apparati incident to the drying of shrimp hulls and heads and he has attached hereto and made part hereof prints of these nine photographs so taken by him, numbered respectively, Arthur, Nos. 1 to 9, inclusive, for identification with this affidavit. These pictures indicate:

No. 1, the outside view of the hull drying apparati or drying drums and houses.

No. 2, Engine or motive power for revolving drums.

No. 3, Detail of cogs to revolving drums.

No. 4, Rear views of Revolving drums.

No. 5, Sacking Scaffold.

No. 6, Detailed view of drying shrimp hulls and heads, after being dehydrated.

SUPREME COURT OF THE UNITED STATES.

No. 68.—October Term, 1928.

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Foster-Fountain Packing Company, Inc., and Sea Food Company, Appellants, *vs.* E. J. Haydel, Fred Schouest, L. R. Cabriac, et al.	Appeal from the District Court of the United States for the Eastern District of Louisiana.

[October 15, 1928.]

Mr. Justice Butler delivered the opinion of the Court.

Appellants, plaintiffs below, are engaged in the business of catching and canning shrimp for shipment and sale in interstate commerce. Appellees, defendants below, are public officers in Louisiana charged with the duty of enforcing Act No. 103, known as the "Shrimp Act", passed in July, 1926; so far as material here, it is printed in the margin.* Plaintiffs sued to enjoin enforce-

*"AN ACT

"To declare all shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana. . . .

"Section 1. . . . That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said salt water shrimp shall be and are hereby declared to be the property of the State; until the title thereto shall be divested in the manner and form herein authorized and shall be under the exclusive control of the Department of Conservation of the State of Louisiana, until the right of private ownership shall vest therein as herein provided, and that no person, firm or corporation shall catch or have in their possession, living or dead, any salt water shrimp, or parts thereof, or purchase, sell or offer for sale, any such shrimp or parts thereof, after same have been caught except as otherwise permitted herein.

"Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or

ment of certain of its provisions on the ground, among others, that they violate the commerce clause of the Federal Constitution. The district judge granted a restraining order pending application for a temporary injunction. There was a hearing before the court, consisting of three judges, organized as required by § 266 of the Judicial Code, U. S. C., Tit. 28, § 380; it set aside the restraining

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organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. . . .

"Section 13. All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

"In order that all of the inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any waters of the State, or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called the tail meat of said shrimp shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limit of the State, without restriction or reservation.

"It shall be the duty of all licensees operating under the Department of Conservation in the shrimp industry in this State to conserve for fertilizer purposes all shells or hulls and heads of salt water shrimp and to report monthly, on blanks to be furnished by the Department of Conservation, the quantity thereof on hand, to the Department of Conservation. It shall be unlawful to export from the State of Louisiana any raw shells or hulls and heads of salt water shrimp as they are required to be manufactured into fertilizer or used for an element in chicken feed. When the shrimp hulls or shells and heads shall have been conserved for the purposes herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof. Any person, firm or corporation violating the provisions of this section shall be liable to the penalties hereinafter imposed."

order and denied the injunction. Then the court allowed this appeal, found that the plaintiffs will sustain irreparable harm and damage, and stayed the enforcement of the Act pending determination here.

The case has not been tried and the sole question is whether, having regard to the particular facts and circumstances, the lower court's refusal to grant a temporary injunction was contrary to some rule of equity or the result of improvident exercise of judicial discretion. *Meccano, Ltd.*, v. *John Wanamaker*, 253 U. S. 136, 141.

A brief statement of the allegations of the complaint follows. The Foster Company is a Louisiana corporation and operates a shrimp hulling plant in that State. It gets shrimp from the tidal waters in the "Louisiana Marshes." The Sea Food Company is a Mississippi corporation and cans and packs shrimp in its plant at Biloxi in that State. Its product is shipped and sold in interstate commerce. The Foster Company and the Sea Food Company have a contract by which the former agrees to catch in Louisiana waters and deliver to the latter in Biloxi a carload of raw shrimp per month during specified periods. The supply is intended for the interstate and foreign business of the Sea Food Company; and, if prevented from obtaining such shrimp, the business of that company will be destroyed and its plant will be of no value.

There are located at Biloxi plants comprising about one-fourth of the shrimp canning industry in the United States. The waters of Mississippi do not contain an adequate supply of shrimp and practically all that are packed there come from the Louisiana Marshes. Shrimp are taken by nets dragged by power boats, and are then put on larger vessels and transported to Biloxi. To prepare the meat for canning, the heads and hulls are picked off; most of them are thrown into the water where they are consumed by scavengers of the sea. But some are made into "shrimp bran", which is used to a small extent in the manufacture of commercial fertilizer.

The Act declares all shrimp and parts thereof in Louisiana waters to be the property of the State, and regulates their taking and reduction to private ownership. It grants the right to take, can, pack and dry shrimp to residents and also to corporations, domiciled or organized in the State, operating a canning or pack-

ing factory or drying platform therein. §4. It is made unlawful to export from the State any shrimp from which the heads and hulls have not been removed. But, in order that all its inhabitants "may enjoy the State's natural food product," the Act declares it lawful to ship unshelled shrimp to any point within the State. Whoever shall lawfully take shrimp from the waters is granted a qualified interest which may be sold within the State. And, when the tail meat is removed within the State, the taker or possessor has title and the right to sell and ship the same "beyond the limit[s] of the State, without restriction or reservation". It is declared unlawful to export from the State any raw shells or hulls and heads "as they are required to be manufactured into fertilizer or used for an element in chicken feed". But, when they have been "conserved for the purpose herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof." § 13. Penalties are prescribed for violations. § 19.

And the complaint alleges that for years shrimp taken from Louisiana waters has been shipped out of the State unshelled; that only a negligible amount of hulls and heads of such shrimp as are consumed within the State has ever been used as fertilizer; that the declared purpose to conserve them is a subterfuge. And plaintiffs state that, notwithstanding their willingness to pay all charges, licenses and taxes imposed and to comply with all the valid requirements, defendants, if not enjoined, will prevent plantiffs from taking or acquiring shrimp from Louisiana waters to their great and irreparable loss.

At the hearing on their motion for a temporary injunction, plaintiffs presented affidavits which tend to show the facts following. By reason of favorable topographical, climatic, labor and other conditions, shrimp taken from the Louisiana Marshes may be more conveniently and economically canned at Biloxi than in Louisiana near to the source of supply. The Biloxi plants have long constituted an important center of the industry, and they are largely dependent upon the Louisiana Marshes for their supply. The enforcement of the Act would injure or destroy the shrimp business of plaintiffs and the industry at Biloxi. About 95 per cent of the shrimp obtained from the waters of Louisiana, when taken, is intended for consumption outside the State. Some shrimp

bran is made from the hulls and heads in Louisiana; but all of it is shipped to Biloxi where it is used to make fertilizer. It is worth less than one per cent of the value of the shrimp. Not more than half the hulls and heads removed in Louisiana is used for any purpose. They have no market value, cannot be sold or given away and often constitute a nuisance.

The facts alleged in the complaint, the details set forth in plaintiffs' affidavits and the provisions of the Act to be restrained show that the conservation of hulls and heads is a feigned and not the real purpose. They support plaintiffs' contention that the purpose of the enactment is to prevent the interstate movement of raw shrimp from the Louisiana Marshes to the plants at Biloxi in order through commercial necessity to bring about the removal of the packing and canning industries from Mississippi to Louisiana. The conditions imposed by the Act upon the interstate movement of the meat and other products of shrimp are not intended and do not operate to conserve them for the use of the people of the State.

One challenging the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce. *Minnesota* v. *Barber*, 136 U. S. 313, 319. *Brimmer* v. *Rebman*, 138 U. S. 78, 81. In determining what is interstate commerce, courts look to practical considerations and the established course of business. *Swift and Company* v. *United States*, 196 U. S. 375, 398. *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 59. *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 309. *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189, 198, 200. Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among States. And a state statute that operates directly to burden any of its essential elements is invalid. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 290. *Shafer* v. *Farmers Grain Co., supra*, 199. A State is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the State. *Penna.* v. *West Virginia*, 262 U. S. 553, 596. *Oklahoma* v. *Kansas Nat. Gas Co.*, 221 U. S. 229, 255.

The authority of the State to regulate and control the common property in game is well established. *Geer* v. *Connecticut*, 161

U. S. 519, and cases cited at p. 528. These and many other cases show that the State owns, or has power to control, the game and fish within its borders not absolutely or as proprietor or for its own use or benefit but in its sovereign capacity as representative of the people. In *Geer* v. *Connecticut* the Court, speaking through Mr. Justice White, said (p. 529): "Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the State, resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good. Therefore, for the purpose of exercising this power, the State, as held by this Court in *Martin* v. *Waddell*, 16 Pet. [367] 410, represents its people, and the ownership is that of the people in their united sovereignty." In *Lacoste* v. *Dept. of Conservation, La.*, 263 U. S. 545, we said (p. 549): "The wild animals within its borders are, so far as capable of ownership, owned by the State in its sovereign capacity for the common benefit of all its people. Because of such ownership, and in the exercise of its police power, the State may regulate and control the taking, subsequent use and property rights that may be acquired therein."

Defendants rely on *Geer* v. *Connecticut* to sustain their contention that the Act forbidding the shipping of raw and unshelled shrimp out of the State was not in conflict with the commerce clause. The statute of Connecticut declared it unlawful to kill or possess any woodcock, ruffled grouse, or quail for transportation or to transport them beyond the limits of the State. The question was whether the State had power to regulate the killing of game so as wholly to confine its use within the limits of the State. No part of the game was permitted by the statute to become an article of interstate commerce. The Court said (p. 529) that the sole consequence of the provision was "to confine the use of such game to those who own it, the people of that State" and that (p. 530) "in view of the authority of the State to affix conditions to the killing and sale of game . . . it may well be doubted whether commerce is created by an authority given by a State to reduce game within its borders to possession, provided such game be not taken, when killed, without the jurisdiction of the State.

. . . Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the State . . . created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce, and therefore under the control of the Constitution of the United States. . . . (p. 532) The fact that internal commerce may be distinct from interstate commerce, destroys the whole theory upon which the argument of the plaintiff in error proceeds."

But that case is essentially unlike this one. The purpose of the Louisiana enactment differs radically from the Connecticut law there upheld. It authorizes the shrimp meat and bran, canned and manufactured within the State, freely to be shipped and sold in interstate commerce. The State does not require any part of the shrimp to be retained for consumption or use therein. Indeed only a small part is consumed or needed within the State. Consistently with the Act all may be, and in fact nearly all is, caught for transportation and sale in interstate commerce. As to such shrimp the protection of the commerce clause attaches at the time of the taking. *Dahnke-Walker Co.* v. *Bondurant, supra. Penna* v. *West Virginia, supra,* 596, *et seq.* As the representative of its people, the State might have retained the shrimp for consumption and use therein. But, in direct opposition to conservation for intrastate use, this enactment permits all parts of the shrimp to be shipped and sold outside the State. The purpose is not to retain the shrimp for the use of the people of Louisiana; it is to favor the canning of the meat and the manufacture of bran in Louisiana by withholding raw or unshelled shrimp from the Biloxi plants. But by permitting its shrimp to be taken and all the products thereof to be shipped and sold in interstate commerce, the State necessarily releases its hold and, as to the shrimp so taken, definitely terminates its control. Clearly such authorization and the taking in pursuance thereof put an end to the trusts upon which the State is deemed to own or control the shrimp for the benefit of its people. And those taking the shrimp under the authority of the Act necessarily thereby become entitled to the rights of private ownership and the protection of the commerce clause. They are not bound to comply with, or estopped from objecting to, the enforcement of, conditions that conflict with the Constitution of the United

States. *Quaker City Cab Co.* v. *Pennsylvania*, — U. S. —. *Power Co.* v. *Saunders*, 274 U. S. 490, 493, 497. *Hanover Insurance Co.* v. *Harding*, 272 U. S. 494, 507.

If the facts are substantially as claimed by plaintiffs, the practical operation and effect of the provisions complained of will be directly to obstruct and burden interstate commerce. *Penna* v. *West Virginia*, *supra*. *Oklahoma* v. *Kansas Nat. Gas Co.*, *supra*. The affidavits give substantial and persuasive support to the facts alleged. And as, pending the trial and determination of the case, plaintiffs will suffer great and irremediable loss if the challenged provisions shall be enforced, their right to have a temporary injunction is plain. From the record it quite clearly appears that the lower court's refusal was an improvident exercise of judicial discretion.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 68.—October Term, 1928.

Foster-Fountain Packing Company, Inc., and Sea Food Company, Appellants, *vs.* E. J. Haydel, Fred Schouest, L. R. Cabriac, et al.	Appeal from the District Court of the United States for the Eastern District of Louisiana.

[October 15, 1928.]

Separate opinion of Mr. Justice McReynolds.

I think the court below properly applied the correct doctrine and that the challenged decree should be affirmed.

In *Geer* v. *Connecticut*, 161 U. S. 519, 529, 534, this Court upheld legislation by the State which permitted woodcock, ruffled grouse and quail to be killed for transportation and sale within her borders but forbade the killing or possession of such birds when dead for transportation to other states. It accepted the rule relative to dominion over animals *ferae naturae* as stated *in Ex parte Maier*, 103 Calif. 476—

> "The wild game within a State belongs to the people in their collective sovereign capacity. It is not the subject of private ownership except in so far as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or traffic and commerce in it, if it is deemed necessary for the protection or preservation of the public good."

And commenting upon certain opinions which denied the validity of statutes whereby shipments of game beyond the State were prohibited, it said—

> " . . . But the reasoning which controlled the decision of these cases is, we think, inconclusive, from the fact that it did not consider the fundamental distinction between the qualified ownership in game and the perfect nature of owner-

ship in other property, and thus overlooked the authority of the State over property in game killed within its confines, and the consequent power of the State to follow such property into whatever hands it might pass with the conditions and restrictions deemed necessary for the public interest."

Manifestly, Louisiana has full power absolutely to forbid interstate shipments of shrimp taken within her territory. These crustaceans belong to her and she may appropriate them for the exclusive use and benefit of citizens. If the State should conclude that the best interests of her people requires all shrimp to be canned or manufactured therein before becoming part of interstate commerce, nothing in the Federal Constitution would prevent appropriate action to that end. This would not interfere with any right guaranteed to an outsider. How wild life may be utilized in order to advantage her own citizens is for the producing State to determine. To enlarge opportunity for employment is one way, and often the most effective way, to promote their welfare.

Certainly, I cannot accept the notion that the record discloses any subterfuge—something resorted to for concealment—by Louisiana. And I think no weight should be given to the gratuitous allegation of such purpose by non-residents who are seeking to defeat control by the State in order that they may secure benefits for themselves from wild life found therein.

Any profitable discussion of this controversy must take into consideration the marked distinction between game and property subject to absolute ownership. Cases like *Dahnke-Walker Company* v. *Bondurant*, 257 U. S. 282, which concern property of the latter kind are not persuasive here. A state may regulate the sale and transportation of wild things in ways not permissible where wheat is the subject matter. *Geer* v. *Connecticut, supra; Silz* v. *Hesterberg*, 211 U. S. 31, 41; *Clark Distilling Co.* v. *Western Maryland Railway*, 242 U. S. 311.

SUPREME COURT OF THE UNITED STATES.

No. 69.—October Term, 1928.

13

L. O. Johnson, Jr., and Sea Food Company, Tanas Hebert, et al., Appellants,
vs.
E. J. Haydel, Fred Schouest, L. R. Cabriac, et al.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

[October 15, 1928.]

Mr. Justice Butler delivered the opinion of the Court.

Appellants, plaintiffs below, are engaged in the business of catching and canning oysters for shipment and sale in interstate commerce. Appellees, defendants below, are public officers in Louisiana charged with the duty of enforcing Act No. 258, known as the "Oyster Act," passed in July, 1926, entitled: "An Act To declare all oysters and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the Oyster industry of the State of Louisiana . .". Plaintiffs sued to enjoin enforcement of certain of its provisions on the ground, among others, that they violate the commerce clause of the Federal Constitution. The district judge granted a restraining order pending application for a temporary injunction. There was a hearing before the court, consisting of three judges, organized as required by § 266 of the Judicial Code, U. S. C. Tit. 28, § 380; it set aside the restraining order and denied the injunction. Then, the Court allowed this appeal, found that the plaintiffs will sustain irreparable harm and damage, and stayed the enforcement of the Act pending determination here.

The purpose of this Act is the same in respect of oysters as that of Act No. 103 in respect of shrimp, considered in *Foster-Fountain Packing Co. Inc.*, v. *Haydel* decided this day. The chal-

lenged provisions of the one closely correspond to those of the other. The two cases present similar issues of law and fact. The showing made by plaintiffs in support of their motion for temporary injunction is substantially the same as was made in that case. Our decision there controls this case.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.